

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 29

In the Matter of:

Troutbrook Company, LLC d/b/a Case No. 29-CA-275229
Brooklyn 181, Hospitality,
LLC,

and

New York Hotel and Motel
Trades Council, AFL-CIO.

Place: Brooklyn, New York (Via Zoom Videoconference)

Dates: August 3, 2021

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 29

In the Matter of:

TROUTBROOK COMPANY, LLC D/B/A
BROOKLYN 181, HOSPITALITY,
LLC,

Case No. 29-CA-275229

and

NEW YORK HOTEL AND MOTEL
TRADES COUNCIL, AFL-CIO.

The above-entitled matter came on for hearing, pursuant to notice, before **LAUREN ESPOSITO**, Administrative Law Judge, at the National Labor Relations Board, Region 29, Two MetroTech Center, Suite 5100, Brooklyn, New York 11201, on **Tuesday, August 3, 2021, 9:30 a.m.**



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A P P E A R A N C E S

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Gideon Martin	10	43			
Raymond Pascucci	66	80	85	87	



E X H I B I T SEXHIBITIDENTIFIEDIN EVIDENCE**Respondent:**

R-1

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General Counsel:

GC-1

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GC-2 (a)

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GC-2 (b)

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GC-2 (c)

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GC-2 (d)

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GC-2 (e)

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GC-2 (f)

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GC-2 (g)

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GC-2 (h)

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GC-2 (i)

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GC-2 (j)

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GC-2 (k)

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GC-2 (l)

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GC-2 (m)

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GC-2 (n)

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GC-2 (o)

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GC-2 (p)

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GC-3

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P R O C E E D I N G S

JUDGE ESPOSITO: This is a formal hearing before the National Labor Relations Board in the matter of Troutbrook Company, LLC d/b/a Brooklyn, 181 Hospitality, LLC, case number 29-CA-275299. The Charging Party is New York Hotel and Motel Trades Council, AFL-CIO. The complaint was issued by Region 29 in Brooklyn, New York. My name is Lauren Esposito, and I am the administrative law judge who will be presiding over the hearing and issue -- and issuing a decision in the case.

Because of the COVID-19 pandemic, the hearing is being conducted remotely using the Zoom for Government video conferencing platform. The procedures and protocols for the Zoom hearing were previously discussed with the parties during a pre-hearing conference. Detailed written instructions and protocols were also issued. Because conducting or participating in a Zoom hearing may be new to some, there may be times when things move a bit slower than they would during an in-person hearing. With a little patience and cooperation, we will all get through it.

For those of us who have joined only to observe the hearing, I remind you to keep both your audio and your video app turned off at all times. Any violation of this instruction or other disruption will result in your immediate removal and possible referral to both Zoom and the federal authorities for other sanctions.



1 I remind everyone, both participants and observers, again,
2 that no videotaping or audio recording is permitted. Only the
3 court reporter may record the hearing in order to prepare the
4 official record. Again, any violations may result in removal
5 and other sanctions.

6 Will Counsel please state their appearances for the
7 record? For the General Counsel?

8 MR. CHILDHERHOSE: Brent Childerhose.

9 JUDGE ESPOSITO: And for the Respondent?

10 UNIDENTIFIED SPEAKER: You're mute, Lou.

11 JUDGE ESPOSITO: Yeah, can you -- you need to --

12 MR. DILORENZO: Lou DiLoren -- Louis DiLorenzo from Bond,
13 Schoeneck, & King in New York.

14 JUDGE ESPOSITO: And for the Charging Party?

15 MR. MARTIN: Gideon Martin.

16 JUDGE ESPOSITO: Are there any issues the parties wish to
17 deal with on the record before they make their opening
18 statements?

19 MR. CHILDHERHOSE: Nothing here, Your Honor.

20 JUDGE ESPOSITO: Mr. DiLorenzo? You're muted, Mr.
21 DiLorenzo.

22 MR. DILORENZO: Nothing here, Your Honor.

23 JUDGE ESPOSITO: Okay, thank you.

24 Mr. Martin?

25 MR. MARTIN: Nothing from the Charging Party, Your Honor.



1 JUDGE ESPOSITO: All right.

2 Mr. Childerhose, would you like to make an opening
3 statement for General Counsel?

4 MR. CHILDERHOSE: I would, Your Honor. Good morning.
5 Respondent in this case refuses to bargain in good faith with
6 the Union. As background, the Union was certified as the
7 bargaining representative for the Respondent's employees back
8 on September 24th, 2018. After the Union was certified,
9 Respondent refused to meet and bargain. Region issued
10 complaint which resulted in a Board order dated June 3rd, 2019.
11 Court of Appeals for the DC Circuit enforced that order and
12 issued its mandate on April 22nd, 2020. Only then did
13 Respondent agree to meet with the Union.

14 Parties first met on May 18th, 2020. They met again twice
15 in June 2020. Due to the effects of the pandemic, there was a
16 pause in the parties meeting until negotiations resumed
17 February 2nd, 2021. Parties have now met a total of six times,
18 with the last meeting taking place on April 21st of this year.

19 Despite meeting six times, no substantive process (sic)
20 has been made. The reason for this? Respondent is unlawfully
21 insisting on ground rules designed to frustrate bargaining.
22 Specifically, Respondent insists that bargaining be limited to
23 a subset of noneconomic issues, unilaterally chosen by
24 Respondent, that must first be resolved before any other issues
25 can be addressed. Although the Union provided Respondent the



1 complete proposal at the bargaining -- at the beginning of
2 bargaining in May 2020, Respondent refuses to provide a
3 comprehensive counterproposal and refuses to bargain over
4 economic issues until all noneconomic issues have been
5 resolved.

6 While the Union has repeatedly objected to what Respondent
7 is doing, Respondent is undeterred. What Respondent is doing
8 clearly constitutes bad faith. The evidence is clear, and
9 there is no substantive, factual dispute in this case. Nor is
10 there any question that Respondent's tactics are unlawful. In
11 the decision they issued earlier this year, Sunbelt Rentals,
12 Inc., 380 NLRB No. 102, the Board held that it is unlawful for
13 an employer to refuse to bargain over economic subjects until
14 all noneconomic subjects have been resolved. This is exactly
15 what Respondent is doing.

16 As such, the General Counsel requests that Your Honor find
17 Respondent is refusing to bargain in good faith and must cease
18 and desist from violating the act. Thank you.

19 JUDGE ESPOSITO: Okay, just one minute. Okay, Mr.
20 Childerhose, the Sunbelt Rental case, you said 380 NLRB. Do
21 you mean 370?

22 MR. CHILDERHOSE: I'm going to have to doublecheck. It's
23 a 2021 case.

24 JUDGE ESPOSITO: Okay. So then it would probably be 370.

25 MR. CHILDERHOSE: Okay. I had a typo in my notes. Thank



1 you, Your Honor.

2 JUDGE ESPOSITO: Okay. So it's 370 No. 102? I just want
3 to make sure I got that right.

4 MR. CHILDERHOSE: Correct.

5 JUDGE ESPOSITO: Okay. 370 No. 1 -- Sunbelt Rentals.
6 Okay, thank you.

7 Mr. DiLorenzo, would you like to make your opening
8 statement now or wait until the beginning of Respondent's case?

9 MR. DILORENZO: Your Honor, we would like to wait until we
10 present our case. Thank you.

11 JUDGE ESPOSITO: Sure.

12 Okay, General Counsel, is there anything else before you
13 call your first witness?

14 MR. CHILDERHOSE: There's not, Your Honor.

15 JUDGE ESPOSITO: Okay. All right, go ahead and call your
16 first witness.

17 MR. CHILDERSHOSE: General Counsel calls Gideon Martin.

18 JUDGE ESPOSITO: All right. Mr. Martin, can you please
19 raise your right hand so that we can all see it? Thank you.
20 Whereupon,

21 GIDEON MARTIN

22 having been duly sworn, was called as a witness herein and was
23 examined and testified as follows:

24 JUDGE ESPOSITO: Can you please state and spell your full
25 name for the record?

1 THE WITNESS: Gideon Martin. G-I-D-E-O-N M-A-R-T-I-N.

2 JUDGE ESPOSITO: Thank you, Mr. Martin. Let me just
3 remind you about a few things before Mr. Childerhose begins his
4 questioning.

5 First, it's very important that you listen carefully to
6 each question. Do not start speaking or answering until you're
7 sure the question is finished, so that the court reporter can
8 hear everything that's going on and the person who transcribes
9 the tape is not dealing with more than one person speaking at
10 the same time.

11 If someone objects, do not answer the question
12 immediately. Wait for me to rule on the objection.

13 Third, let us know right away if you're having trouble
14 with your audio or video. Interrupt whatever else is going on.
15 Tell us that you are having problems or wave your hand in front
16 of the camera where we can see it. If you lose your audio or
17 video completely, check your power and internet connections and
18 reconnect or reboot the device if necessary. Then, attempt to
19 join the hearing using the same link that I sent out last week,
20 and that should work.

21 THE WITNESS: Very good.

22 JUDGE ESPOSITO: Okay. Go ahead, Mr. Childerhose.

23 **DIRECT EXAMINATION**

24 Q BY MR. CHILDERHOSE: Mr. Martin, what is your position
25 with the Union?



1 A I'm Assistant General Counsel.

2 Q Okay. And how are you familiar with the Employer in this
3 case?

4 A The Employer is one of the hotels that our Union has
5 organized.

6 Q Okay. And this is admitted in the Employer's answer, but
7 the Union was certified on September 24th, 2018; is that
8 correct?

9 A That's right.

10 Q And generally, what are the categories of employees in
11 that -- in the bargaining unit?

12 A I -- to my knowledge, it's housekeeping employees. For
13 example, room attendants and housepersons. I believe there's
14 also food and beverage employees in the classification. I
15 believe there's additional items in the class -- excuse me,
16 additional classifications in the bargaining unit, as well.

17 MR. CHILDERHOSE: Okay. And Your Honor, I have, -- in my
18 Exhibit 2, I've included the Court of Appeals -- their
19 judgment, and then also the mandate. As far as putting those
20 into evidence, is that something that can just be done
21 administratively?

22 JUDGE ESPOSITO: Is there any objection to the admission
23 of the court of appeals judgment filed on February 28th, 2020
24 and the mandate filed on April 22nd, 2020, Mr. DiLorenzo?

25 MR. DILORENZO: Yeah, I'm not -- I'm not sure the



1 relevancy. And I don't understand if it's appropriate to put
2 cases into -- into evidence. There's an earlier case where the
3 objections to the election were upheld -- one of the objections
4 was upheld and the new objection was directed. And the other
5 objections -- that case deals with the objections that weren't
6 addressed in the first case, I believe. But I think, to make
7 the record complete, if things are going to go in, all those
8 cases should go in.

9 If the implication is that we did something wrong by
10 exercising our right to properly object to an election or to
11 continue to object to an election where only one of the
12 objections was dealt with and sustained so that a new election
13 was held, I think that it's a little improper to cherry-pick
14 the second one to argue that we didn't do anything until we
15 were directed to bargain.

16 JUDGE ESPOSITO: Okay.

17 MR. DILORENZO: I mean, it was a technical refusal to
18 bargain. We have the right to do that. We exercised our
19 rights. It's America. I don't understand -- I don't
20 understand the implication of trying to cherry-pick this and
21 say that this was a refusal to bargain case.

22 JUDGE ESPOSITO: Okay. We'll -- well, Mr. Childerhose, is
23 the General Counsel arguing that Respondent somehow unlawfully
24 refused to bargain during that period when the case involving
25 the objections was pending or prior to the mandate of the DC

1 Circuit? Or is --

2 MR. CHILDHERHOSE: Well, it provides -- it provides
3 background and context to this. But I will say, the Employer's
4 testing certification was found to be unlawful. It did not
5 have merit, and it was done in bad faith.

6 MR. DILORENZO: How about the first -- how about the first
7 testing? How about the first testing? You admit that that one
8 was lawful?

9 MR. CHILDHERHOSE: The first testing? I mean, there was
10 just one Employer case that I'm familiar with. What --

11 MR. DILORENZO: Where the objection was upheld -- where
12 the objection was upheld and in --

13 JUDGE ESPOSITO: Yeah, because from the -- what Mr.
14 DiLorenzo is saying, from the DC Circuit's opinion, the
15 February 28th, 2020 judgment, it appears that there was a
16 second election, Mr. Childerhose.

17 MR. CHILDHERHOSE: There was a rerun election. I mean that
18 I -- I don't know the relevance of that. You know, our
19 interest is with regard to Employer's -- the Employer's
20 behavior after the certification to bargaining unit, which has
21 continued -- you know, this Union was certified back in the
22 fall of 2018. And the Employer has continued to refuse to
23 bargain in good faith with this Union.

24 JUDGE ESPOSITO: Okay. So Mr. DiLorenzo --

25 MR. DILORENZO: I object, Your Honor. I think it's



1 improper. I think it's bad government programming to do this.
2 So I object. You can make your ruling, whatever you want.

3 JUDGE ESPOSITO: Okay.

4 MR. DILORENZO: But I object.

5 JUDGE ESPOSITO: All right. Well here's what I'm going to
6 do. I'm going to admit the February 28th, 2020 judgment of the
7 DC Circuit and the April 22nd, 2020 mandate.

8 And then, Mr. DiLorenzo, if you would like to either refer
9 me to previous decisions of the Board or of whichever Court of
10 Appeals may have handled the initial objections before the
11 second election, or if you would like to introduce into
12 evidence decisions or documents relevant to that sort of phase
13 of the post-election proceedings, then I'll allow you to do
14 that and I'll admit those documents. Okay?

15 MR. DILORENZO: Thank you, Your Honor.

16 MR. PASCUCCI: Your Honor -- I'm sorry. Could I make a
17 clarifying statement?

18 JUDGE ESPOSITO: Sure. Go ahead, Mr. Pascucci.

19 MR. PASCUCCI: So there was no prior Board decision or
20 court of appeals decision. The first election -- the region --
21 the post-election objections were filed in the first election.
22 The region determined that there needed to be a rerun election.
23 They actually referred it to a different region, I think Region
24 25.

25 JUDGE ESPOSITO: Um-hum.



1 MR. PASCUCCI: Sent it to -- I forget the region in New
2 Jersey number, but they sent it to a different region. That
3 region then conducted the second election. So that was the
4 case history.

5 JUDGE ESPOSITO: Okay.

6 MR. PASCUCCI: And then there was the technical refusal to
7 challenge the legitimacy of the second election, which, you
8 know, ultimately, the court of appeals ruled against the
9 Employer, at which point we began to bargain.

10 JUDGE ESPOSITO: Okay. All right, I understand. So if
11 there are documents that are pertinent to the direction of the
12 second election or any other documents pertinent to sort of the
13 R case proceedings that you would like to have admitted into
14 evidence, I'll admit those to evidence, assuming they can be
15 authenticated. And I don't anticipate, if it's some document
16 that was issued by the region or the Board or a court, that
17 there's going to be some sort of issue with authentication.
18 Okay?

19 MR. DILORENZO: Thanks, Your Honor.

20 MR. CHILDERHOSE: Your Honor, I did realize I haven't
21 moved or we haven't -- I don't think we've received into
22 evidence the formal papers yet.

23 JUDGE ESPOSITO: All right. Is there any objection to the
24 admission of the formal papers, Mr. DiLorenzo?

25 MR. DILORENZO: No, Your Honor.



1 JUDGE ESPOSITO: Okay. So then the formal papers, marked
2 as General Counsel Exhibit 1, are admitted.

3 **(General Counsel Exhibit Number 1 Received into Evidence)**

4 JUDGE ESPOSITO: Okay. And so Mr. Childerhose, so the
5 February 28th judgment and the April 22nd mandate -- I
6 should -- this is just pages 1 through 3 of General Counsel's
7 Exhibit 2 or 1 through 5 of General Counsel's Exhibit 2? Is
8 that how you're referring to them or are they their own
9 exhibit?

10 MR. CHILDERHOSE: Yeah, so I put a subsection on at the
11 bottom right corner of each page. So the judgment is --

12 JUDGE ESPOSITO: I see.

13 MR. CHILDERHOSE: So this is all General Counsel Exhibit
14 2.

15 JUDGE ESPOSITO: Okay.

16 MR. CHILDERHOSE: 2(a) is the judgment, which is four
17 pages. And then 2(b) is the mandate, which is one page.

18 JUDGE ESPOSITO: Okay. So then General Counsel Exhibit
19 2(a) and 2(b) are admitted.

20 **(General Counsel Exhibit Numbers 2(a) and 2(b) Received into**
21 **Evidence)**

22 JUDGE ESPOSITO: Go ahead, Mr. Childerhose.

23 Q Mr. Martin, if I can refer you to what's marked for
24 identification in General Counsel's Exhibit 2(c).

25 A Just one moment while I pull that up here. Okay.



1 Q Okay. Do you recognize this document or can you identify
2 this document?

3 A I do, yes. I recognize these, and these are bargaining
4 notes.

5 Q Okay. So after -- after the DC Circuit's mandate, can you
6 tell us what happened next with regard to the parties?

7 A Yes. I reached out to the Employer in the form of Mr.
8 Pascucci, counsel to the Employer, to engage in bargaining.

9 Q Okay. And when was the first session held?

10 A I believe the first session was -- was held in May.

11 Q Okay. Was that May 18th as referenced in the notes?

12 A That's right. And to be clear, this is of 2020.

13 Q Yep. And who was present at that -- what -- how was --
14 logistically, how was that session held?

15 A This was the height of the pandemic. So it was held
16 telephonically, as were all bargaining sessions.

17 Q Okay. And who participated in the first session?

18 A This first session for the Union was then-General Counsel
19 Rich Maroko, myself, as well as Arisha Sierra-Blas from our
20 organizing department.

21 Q Okay. And have every -- who took the notes that are --
22 the notes that constitute GC Exhibit 2(c)?

23 A Actually, I believe at this session there was also present
24 another member from my department, the legal department, Ms.
25 Burgos (phonetic throughout), who took these notes.



1 Q Okay. Have you reviewed these notes?

2 A I have, yes.

3 Q And are these notes an accurate reflection of what
4 happened at the meeting?

5 A Yes.

6 MR. CHILDERTHOSE: Okay. I'd like -- so I'll move the
7 admission -- I think we've already stipulated that all the
8 notes will go in, Your Honor, both for the Employer and the
9 Union's notes. I guess this would be the first set of the
10 Union's notes that we have.

11 JUDGE ESPOSITO: Okay.

12 MR. CHILDERTHOSE: Do I need to move the admission of
13 these, or have these been received as evidence?

14 JUDGE ESPOSITO: Well -- well -- well, let me just ask,
15 because off the record, we did discuss the notes and the
16 admissibility of the bargaining notes taken by both the
17 Charging Party and the Respondent. And so the -- so Mr.
18 Childertrose, you're -- are you willing to stipulate to the
19 admissibility of the bargaining notes taken both by the
20 Charging Party and the Respondent?

21 MR. CHILDERTHOSE: I am, yes.

22 JUDGE ESPOSITO: Okay. Mr. DiLorenzo, are you also
23 willing to stipulate to the admissibility of the bargaining
24 notes taken by both the Charging Party and the Respondent?

25 MR. DILORENZO: Yes, Your Honor.



1 JUDGE ESPOSITO: Okay. So then General Counsel's Exhibit
2 2(c) is admitted.

3 **(General Counsel Exhibit Number 2(c) Received into Evidence)**

4 MR. CHILDERHOSE: Okay. And for reference, I don't have
5 the Employer's notes in my Exhibit 2, though -- though, again,
6 we agree to have those put into the record. The bargaining
7 notes I do have are marked for identification as GC 2(c); GC
8 2(e), which is June 4th, 2020; and then we have GC 2(h), which
9 is June 25th, 2020; 2(j), which is February 2nd, 2021; 2(m),
10 which is March 11th, 2021; and then 2(p), which is April 21st,
11 2021.

12 JUDGE ESPOSITO: Okay. So that was 2(c), (e), (h), (j),
13 (m), and (p); is that correct?

14 MR. CHILDERHOSE: Correct.

15 **(General Counsel Exhibit Numbers 2(e), 2(h), 2(j), 2(m), and**
16 **2(p) Received into Evidence)**

17 JUDGE ESPOSITO: Okay. And Mr. DiLorenzo, how would you
18 like to mark the Respondent's notes? Would you like that
19 marked as Respondent Exhibit 1?

20 MR. DILORENZO: We could do that, Your Honor.

21 JUDGE ESPOSITO: Okay.

22 MR. DILORENZO: We could do that 1(a) through -- you want
23 them all marked as 1? Do you want some --

24 JUDGE ESPOSITO: Yeah. Why don't we just -- why don't we
25 just have it marked as one document, because it --



1 MR. DILORENZO: Okay.

2 JUDGE ESPOSITO: The one document seems to contain the
3 notes of all the bargaining sessions.

4 MR. DILORENZO: That's fine. That's fine.

5 JUDGE ESPOSITO: Okay. So then Respondent's notes of the
6 bargaining sessions, a three-page document that's been marked
7 as Respondent Exhibit 1, entitled Brooklyn Fairfield Hotel and
8 the New York Hotel & Motel Trades Council (Union or HTC), is
9 admitted.

10 **(Respondent Exhibit Number 1 Received into Evidence)**

11 Q Okay. Mr. Martin, if I could have you look at General
12 Counsel's Exhibit 2(d) for subsection (B).

13 A Yes, let me just pull that up, please. You said (d), Mr.
14 Childerhose?

15 Q Yes.

16 A Okay.

17 Q Okay. Do you recognize this document?

18 A I do.

19 Q And what is this document?

20 A This is a copy of the initial collective bargaining
21 agreement proposal that the Union sent to the Employer.

22 Q Okay. And it appears in the bargaining notes there's
23 reference to the Union's proposal. Is that what this is?

24 A That's right.

25 MR. CHILDERHOSE: Okay. I would move the admission of



1 2 -- 2(d), Your Honor.

2 MR. PASCUCCI: Can you --

3 JUDGE ESPOSITO: I --

4 MR. PASCUCCI: I apologize. I realize this is awkward
5 because I'm not the attorney and we're doing this by Zoom, but
6 I'd like to confer with my counsel on this -- on whether we
7 would object to this exhibit or not. I could state the basis,
8 if that's the most efficient way to do this.

9 JUDGE ESPOSITO: No. No, I think you should confer with
10 Mr. DiLorenzo. Do you need to have a breakout room to do that?

11 MR. PASCUCCI: Yeah, that would be great, Judge.

12 JUDGE ESPOSITO: Okay. All right, just give me a minute.

13 THE COURT REPORTER: I'm going to go off the record.

14 JUDGE ESPOSITO: Yes, I'm sorry, Barry. Can you just go
15 off the record?

16 (Off the record at 10:11 a.m.)

17 MR. DILORENZO: Yes, Your Honor. Thank you for that
18 opportunity to confer --

19 JUDGE ESPOSITO: Sure.

20 MR. DILORENZO: -- with Mr. Pascucci. So Your Honor, we
21 heard the testimony from Mr. Gideon and this is the proposal
22 that he sent to the -- to the company that morning or that day
23 before the negotiations. But --

24 JUDGE ESPOSITO: Um-hum.

25 MR. DILORENZO: Our information is that the IWA, the



1 industry-wide agreement, which is roughly 100 pages, was sent
2 that morning along with the rider, which is the document that's
3 been presented here as the proposal. But you know, this is a
4 small percentage of the proposal that was sent. The proposal
5 was the IWA. And if you look at the notes, you'll see that the
6 first entry is:

7 "Our General Counsel Rich explains the Union's
8 proposal that we sent to them this morning. We
9 propose the IWA, our master contract, with the
10 changes that are better than what we currently have."

11 So we would want that agreement to be part of this Exhibit
12 as to what was sent that morning as the proposal. The 100
13 pages is missing.

14 JUDGE ESPOSITO: Okay. Mr. Childerhose?

15 MR. CHILDERHOSE: We can ask the witness for
16 clarification.

17 JUDGE ESPOSITO: Sure, go ahead.

18 **RESUMED DIRECT EXAMINATION**

19 Q BY MR. CHILDERHOSE: Mr. Martin, can you clarify with
20 regard to what 2(d) is, and what -- what was proposed to the
21 Employer?

22 A Yes. Certainly. So 2(d) is the memorandum of -- of
23 understanding that we drafted, that I had sent to Mr. Pascucci
24 the same day as that first bargaining session. And this is a
25 multi-page document that lays out several terms and conditions



1 that we were proposing, including in paragraph 1, enumerated
2 paragraph number one, incorporation of the industry-wide
3 agreement that Mr. DiLorenzo referred to.

4 MR. CHILDERTHOSE: I don't have a copy of the industry-wide
5 agreement. I don't think it has to be in the record, so I --I
6 would still move for the admission of this document and Mr.
7 Martin has explained what it is.

8 MR. DILORENZO: Well, Your Honor, I would object if it's
9 being offered as the proof of the offer that was sent that
10 morning. It's 16 out of 116 pages.

11 JUDGE ESPOSITO: Okay. Well, I'm -- I'm not clear as to
12 whether the IWA was actually provided to Respondent or -- or
13 not.

14 Q BY MR. CHILDERTHOSE: Mr. Martin, was the IWA provided to
15 Respondent?

16 A It was, yes.

17 MR. DILORENZO: So we have no objection -- just to be
18 clear, Your Honor, I don't have any objection to the -- to
19 this -- to what was submitted that day going into evidence, but
20 it would include the IWA agreement.

21 MR. CHILDERTHOSE: I think the record is clear the IWA was
22 part of the Union proposal. I -- I don't think it has to be
23 included in the record given, you know, given the facts and the
24 allegation that's at issue. I don't think it adds anything to
25 include it --



1 MR. DILORENZO: Really --

2 MR. CHILDERHOSE: -- you know, an additional hundred pages
3 into -- into the record.

4 MR. DILORENZO: My God. You've got to be kidding me. I
5 don't know if you've ever --

6 JUDGE ESPOSITO: All right, all right, Mr. --

7 MR. DILORENZO: -- done collective bargaining before, but
8 when some -- the issue in this case is whether it was a take it
9 or leave it IWA agreement. Are you serious that it's not
10 relevant --

11 JUDGE ESPOSITO: All right, all right --

12 MR. DILORENZO: -- to what was produced?

13 JUDGE ESPOSITO: All right, all right, Mr. DiLorenzo, I
14 understand. Yes, I think the IWA also should be a part of the
15 record since it was part of the Union's initial proposal and is
16 referred to in General Counsel's Exhibit 2(d).

17 So I think that, in order to have a complete record, the
18 IWA should be included. And it appears to me from the
19 testimony, and correct me if I'm wrong, that the I -- actual
20 IWA was also sent to the Respondent at -- at around the same
21 time as this General Counsel Exhibit 2(d) was.

22 So I -- I do think it should be part of the record. Mr.
23 Childerhose, if you want to offer it that's fine, or Mr.
24 DiLorenzo, if you would like to, but -- but I do think that it
25 should be part of the record since it was part of the proposal,



1 the Union's proposal, and it was clearly discussed by the
2 parties in the context of their collective bargaining
3 negotiations, according to the notes that I've looked at
4 anyway. So I don't care who wants to do it or how, but it --
5 it should be a part of the record.

6 MR. CHILDERHOSE: And I -- I don't object to it being
7 included into evidence. I -- I -- I -- I don't have a copy of
8 it, so but -- but if -- but if Mr. DiLorenzo, do you have a
9 copy, or if Mr. Martin can provide it, I don't object it being
10 included into evidence.

11 JUDGE ESPOSITO: Okay.

12 MR. DILORENZO: I -- I -- I think for the purposes of the
13 record it should be part of this Exhibit, so we keep it
14 straight, but I'll -- I'll introduce it, if you want it as a
15 separate Exhibit. I mean, as long as it's part of the record
16 but it just seems to me if we are giving testimony about what
17 was sent that morning, I don't think the record should be
18 confusing. A lot of actions that we took were based on the
19 fact that that the IWA agreement was sent that morning.

20 JUDGE ESPOSITO: Let me -- let me -- let me just clarify
21 with Mr. Martin. Mr. Martin, was the IWA also sent that
22 morning with General Counsel Exhibit 2(d)?

23 THE WITNESS: Yes, Your Honor.

24 JUDGE ESPOSITO: Okay. So here's

25 MR. PASCUCCI: If --



1 JUDGE ESPOSITO: I'm sorry, Mr. Pascucci, go ahead.

2 MR. PASCUCCI: I apologize. If I could interject for a
3 moment. The -- the version that was sent to us back in -- when
4 this meeting took place, which I guess was May of 20 -- what
5 year are we in -- 2020 --

6 MR. CHILDERHOSE: May 18, 2020.

7 MR. PASCUCCI: Okay, thanks. I'm not sure that the --
8 what years, what version it was. I think if the Union could
9 produce it now, that would be helpful. You know, this was sent
10 to me by email years ago, and I was just searching for it on my
11 computer, on my laptop, and I'm not finding it.

12 But I think -- I think the objection that Mr. DiLorenzo
13 was asserting is to -- to treat it as a partial -- you know,
14 part of the Union's proposal is not introducing all of the
15 Union's proposal -- so it seems to me that the General Counsel
16 should, and/or the Charging Party, should produce this
17 document, and make it a part of the Exhibit, so that both can
18 be admitted simultaneously.

19 JUDGE ESPOSITO: Okay. Here's what we are going to do. I
20 don't want to hold up the hearing now, while people go back and
21 find the version of the IW -- the right version of the IWA.
22 I'm going to admit General Counsel Exhibit 2(d) as it is now,
23 with the understanding that the record will somehow be
24 supplemented with the complete version of the IWA that was
25 provided to the Respondent the morning of the first negotiating



1 session with General Counsel Exhibit 2(d). And General
2 Counsel, Mr. Martin can do that, or Respondent can do that.
3 Either way is -- is fine.

4 So for now, General Counsel Exhibit 2(d) is admitted with
5 the understanding that the IWA, or a version of the IWA, was
6 also provided to the Respondent the morning of the first
7 negotiating session, and the record will be supplemented with
8 that version of the IWA.

9 **(General Counsel Exhibit Number 2(d) Received into Evidence)**

10 JUDGE ESPOSITO: Okay. Go ahead Mr. Childerhose.

11 Q BY MR. CHILDERHOSE: Okay, and Mr. Martin, is -- is that
12 something that can be provided?

13 A I -- I, again, I don't have a copy of the IWA, so I can't
14 commit to providing it myself, because I don't have it.

15 Your Honor, let me just step in and try to make this
16 easier for everyone. I will find the -- the version that was
17 provided to the Employer and I will circulate it via email to
18 everybody who is part of this Zoom.

19 JUDGE ESPOSITO: Okay.

20 MR. PASCUCCI: Thank you.

21 THE WITNESS: I will do that after -- I guess after I get
22 off the stand, or during a recess.

23 JUDGE ESPOSITO: Yes. We can -- it depends on how long --
24 we can take a break or if worse comes to worse, we can hold the
25 record open for it -- for the admission of that document.



1 THE WITNESS: I can do it very quick.

2 JUDGE ESPOSITO: Okay. Go ahead, Mr. Childerhose.

3 Q BY MR. CHILDERHOSE: Okay. Did -- did the Employer
4 provide any counterproposal at that first meeting on May 18,
5 2020?

6 A Not a counterproposal at the first meeting, no.

7 Q Okay. How -- about how long did that meeting last?

8 A To my recollection, not very long. It was a bit more
9 introductory than anything. Perhaps half an hour.

10 Q Okay. I'd like to show you, or have you look at General
11 Counsel's Exhibit 2(e).

12 THE COURT REPORTER: One moment. I apologize, one moment.
13 I have these, unfortunately, out of order. Thank you for your
14 patience. E as in elephant, Mr. Childerhose?

15 MR. CHILDERHOSE: Correct.

16 THE COURT REPORTER: Yes. Okay.

17 Q BY MR. CHILDERHOSE: Okay. Do you recognize this
18 document?

19 A I do, yes. These are bargaining notes from a June 4th,
20 2020, bargaining session.

21 Q Okay. After the May 18, 2020, session when did the
22 parties next meet?

23 A On June 4th.

24 Q Okay. And have you reviewed these notes?

25 A I have, yes.



1 Q And who typed these notes?

2 A These notes were typed by legal operations assistant for
3 the Union, Julissa Sanchez.

4 Q Okay, and are these -- these notes accurate, Mr. -- as
5 reflecting what took place at the second meeting?

6 A Yes.

7 Q Was there -- was there any agreement reached at the second
8 meeting?

9 A There was not.

10 Q Okay. Given these notes are detailed, they're already in
11 evidence, I guess we'll go ahead and move forward. If I can
12 have you look at -- there's an email chain that is 2(g) and
13 then there's another email dated, June 4th, which is 2(f),
14 comes before (g). So if you can look at General Counsel's 2(f)
15 and 2(g), and specifically, there appear to be two emails that
16 were sent on June 4th.

17 UNIDENTIFIED SPEAKER: Sorry, Judge, I don't know how to
18 turn that off.

19 JUDGE ESPOSITO: Okay.

20 Q BY MR. CHILDERHOSE: Can you identify what's -- it's
21 backwards, but can you identify what 2(g) is?

22 A Yes. 2(g) is an email sent on June 18th of 2020 from Mr.
23 Pascucci to me.

24 Q Okay. And 2(g) is - its nine pages. It's a nine-page
25 email chain and it's in reverse order chronologically, so if

1 you go to the last page of 2(g).

2 A Okay. This is the beginning of that same chain which
3 starts with a June 4th email from Mr. Pascucci to me.

4 MR. PASCUCCI: Coul -- could I clarify, is that page 33 of
5 the GC's Exhibit 2 (indiscernible, simultaneous speech)?

6 MR. CHILDERHOSE: It's 32 and 33, yes.

7 MR. PASCUCCI: So it starts at 33 right? The email chain
8 starts at 33?

9 MR. CHILDERHOSE: Or it ends at 33. It's in reverse
10 chronological order because it's an email chain.

11 MR. PASCUCCI: Yeah, but -- in other words, the
12 communication started at 33 and then went, you know, from there
13 up to 30 whatever, or --

14 MR. CHILDERHOSE: Correct. And then, so it appears that
15 on page 32 of the General Counsel's Exhibit 2 we have the first
16 email that's dated June 4, at 4:47 p.m., Mr. Pascucci.

17 Q BY MR. CHILDERHOSE: Mr. Martin, is that correct, Mr.
18 Martin?

19 A Yes.

20 Q And was this email sent after the June 4th bargaining
21 session?

22 A I believe it was, yes.

23 Q Okay. And then if I can have you look at General Counsel
24 Exhibit (f), which is two pages, and it starts at page 23 of
25 General Counsel's Exhibit 2. This appears to be a second email



1 from Mr. Pascucci on June 4th, which was sent at 5:18 p.m.

2 A I see it, yes.

3 Q Is that correct?

4 A That's right, yes.

5 Q Okay. And so what -- what were these emails about
6 generally -- just to help us understand how these emails speak
7 to themselves, but if you understand, what -- what -- what was
8 being communicated -- what was this communication about?

9 A I took these to, essentially, mean that Mr. Pascucci's
10 synopsis, or follow-up, to that bargaining meeting in the form
11 of proprio -- excuse me, proposed ground rules, as well as his
12 key takeaways in his view from that session.

13 Q And if you go to -- let me just scroll up the email chain
14 in 2(g), which is hard to do on my small laptop here.

15 MR. PASCUCCI: Judge, I think we could just stipulate to
16 all this, can't we? I mean, they are -- they are all dated.
17 You know, I think we can stipulate that -- to all the emails
18 back and forth.

19 MR. CHILDERHOSE: Okay, can I --

20 JUDGE ESPOSITO: Well -- well, I -- I -- I understand
21 that. But you know, Mr. Childerhose also has the opportunity
22 to ask questions regarding the emails of Mr. Martin, if --
23 if -- if -- if he wants to.

24 So but -- but -- but let me just take a minute to clarify.
25 Okay. Who -- who is now representing Respondent, Mr. DiLorenzo



1 or Mr. Pascucci?

2 MR. PASCUCCI: I apologize, Judge. I think we are sort of
3 acting as cocounsel, maybe.

4 JUDGE ESPOSITO: Okay, I need one. One person, it can be
5 either one of you. I don't care who it is, but I just need
6 one. Okay?

7 MR. DILORENZO: Your Honor, I'm not sure of the Board's
8 rules here. I mean, I understand Mr. Martin is the key witness
9 for the Charging Party and the General Counsel. He also
10 appears to be representing the Charging Party. I mean, is Mr.
11 Pascucci allowed to represent the Employer, as well as be a
12 witness in the case under the Board's rules?

13 JUDGE ESPOSITO: If -- if -- if the other parties have no
14 problem with that -- with that, it's, you know, it's
15 typically -- I mean, it's typically in my experience, in
16 bargaining cases such as this, where there are attorneys that
17 were also chief spokespersons for a party in negotiations, the
18 parties often agree, amongst themselves, that the attorney who
19 is representing the party in the Board proceeding will -- may
20 also testify, and then in the event that they testify, then
21 they are questioned by a different attorney. But for the
22 remainder of the proceeding when they are not testifying, they
23 act as the attorney for the party in the Board proceeding.

24 So if Mr. Childerhose and Mr. Martin have no problem with
25 Mr. Pascucci's represent -- you know, being the attorney for



1 the Respondent in the proceeding, as well as testifying, and
2 Mr. DiLorenzo can question Mr. Pascucci in the event that he
3 testifies, that's fine.

4 MR. PASCUCCI: Judge, I apologize. I am used to being the
5 attorney in these cases, so I --

6 JUDGE ESPOSITO: I completely understand, Mr. Pascucci. I
7 am just saying that in my experience, when there is more than
8 one attorney who is speaking, you know, during testimony, it --
9 it gets very chaotic, especially in this Zoom format, so that's
10 why I'm asking you to, sort of, pick one person.

11 MR. DILORENZO: So are you saying Your Honor, though --
12 that I could be the one person for Mr. Pascucci's testimony,
13 and he could handle the rest of the case?

14 JUDGE ESPOSITO: I've -- I've -- I've had that happen in
15 cases before when -- when all parties agree, because you do
16 have these situations in Board hearings that deal with
17 bargaining where you have attorneys who also -- attorneys
18 representing the party in the case, who are -- were also
19 spokespersons for the particular party in the context of
20 collective bargaining negotiations.

21 So I -- I don't find it unreasonable, if everyone else
22 agrees, you know, to have that attorney both represent the
23 party in the Board case, and then testify with a different
24 attorney questioning them during their testimony.

25 MR. DILORENZO: So I would ask if -- the attorney, if Your



1 Honor, if we could find out from the people involved here
2 whether there is any objection?

3 MR. CHILDERTHOSE: None.

4 JUDGE ESPOSITO: Okay. Mr. Childerhose, Mr. Martin, do
5 you have an -- an objection with Mr. Pascucci repre -- sort of
6 serving as the lead attorney here for the Respondent on --
7 during periods of time when he is not testifying?

8 MR. CHILDERTHOSE: I have no objection to that.

9 THE WITNESS: No objection, Your Honor, from the Union.

10 MR. DILORENZO: Are you ready, do you want to talk alone,
11 or do you want to make a decision on this now?

12 MR. PASCUCCI: It's up to you, Lou, either way.

13 JUDGE ESPOSITO: Do you want -- I can put you in a
14 breakout room --

15 MR. DILORENZO: Could you just give us two seconds?

16 MR. PASCUCCI: Yeah, just give us two seconds.

17 JUDGE ESPOSITO: Okay. Let's go off the record for this.
18 (Off the record at 10:35 a.m.)

19 JUDGE ESPOSITO: Okay. Let's go back on the record.

20 THE COURT REPORTER: Here we are.

21 JUDGE ESPOSITO: Mr. Childerhose, go ahead.

22 MR. CHILDERTHOSE: Okay. So I have General Counsel's
23 Exhibit 2(f), which is the 6/4/20 email, and I have General
24 Counsel's Exhibit 2(g), which is an email chain which starts on
25 June 4, 2020 and goes to June 18, 2020. I would move for the



1 admission of 2(f) and 2(g).

2 JUDGE ESPOSITO: Any objection to the admission of General
3 Counsel Exhibit 2(f) and 2(g)?

4 MR. PASCUCCI: No objection.

5 JUDGE ESPOSITO: Okay. General Counsel Exhibit 2(f) and
6 2(g) are admitted.

7 **(General Counsel Exhibit Numbers 2(f) and 2(g) Received into**
8 **Evidence)**

9 **RESUMED DIRECT EXAMINATION**

10 Q BY MR. CHILDERHOSE: Okay. I'll have you look at General
11 Counsel's Exhibit 2(h).

12 A Okay.

13 Q Do you recognize this Exhibit?

14 A I do. This is bargaining notes from the June 25th, 2020,
15 session.

16 Q And do these notes accurately reflect what occurred at
17 that session?

18 A They do.

19 Q And who prepared these notes?

20 A Ms. Sanchez.

21 Q Okay. I'll have you look at General Counsel's Exhibit
22 2(i). And do you recognize that Exhibit?

23 THE COURT REPORTER: Just pulling it up, one moment.

24 A I do, yes. This is the counterproposal that Mr. Pascucci
25 provided on behalf of the Employer.



1 Q BY MR. CHILDERHOSE: When did you -- when were you -- when
2 did you receive that counterproposal?

3 A I believe that was June 25th of 2020.

4 Q Okay. And was that before or after the bargaining
5 session, during the bargaining session?

6 A As I recall, it was afterwards.

7 MR. CHILDERHOSE: I move for the admission of GC 2(i).

8 JUDGE ESPOSITO: Any objection to the admission of General
9 Counsel Exhibit 2(i)?

10 MR. PASCUCCI: No Judge, it's my document. But I know
11 this is strange, but for voir dire, I just think Mr. Martin is
12 incorrect about when he received this, but I guess we can do
13 that in cross. I don't know if that would be voir dire at this
14 point or not.

15 JUDGE ESPOSITO: Why don't you deal with that on cross-
16 examination since it doesn't -- I don't believe it really goes
17 to authentication of the document.

18 MR. PASCUCCI: Okay. Thank you.

19 JUDGE ESPOSITO: All right.

20 MR. PASCUCCI: So no objection, then.

21 JUDGE ESPOSITO: Okay, so General Counsel Exhibit 2(i) is
22 admitted.

23 **(General Counsel Exhibit Number 2(i) Received into Evidence)**

24 THE WITNESS: If I might -- if I might clarify, Your
25 Honor.



1 JUDGE ESPOSITO: Um-hum.

2 THE WITNESS: Sorry, I thought you had said to Mr.
3 Childerhose, when did I review it? I did receive it in
4 conjunction with that bargaining session. I believe it may
5 have been like immediately beforehand. I gave it my full
6 actual review after the meeting.

7 Q BY MR. CHILDERHOSE: Okay. And okay, I'll have you look
8 at General Counsel's Exhibit 2(j). Can you identify this
9 Exhibit?

10 A Yes. This is bargaining notes from the February 2, 2021,
11 session.

12 Q Okay. And was this the next session that took place after
13 the June 25th bargaining session?

14 A It was, yes.

15 Q Okay. And between -- between June 25, 2020, and
16 February 2, 2021, did the parties have any -- any bargaining or
17 any meeting take place?

18 A There was not.

19 Q Okay. Is there an explanation for that?

20 A Yes. This was really, in many senses in New York City,
21 the height of the pandemic. It was wreaking havoc, not only
22 across the city, but particularly, across the hospitality
23 industry, both broadly and specifically, for this hotel.

24 It was a very tough time for this industry and the Union
25 was certainly focused on helping people who were in dire



1 position, and -- and at the same time the hotel was greatly
2 diminished in the business that I was doing, and it seemed
3 sensible to have this delay between sessions to let everyone
4 get back on their feet.

5 Q Okay. And have you reviewed the bargaining notes
6 reflected in General Counsel Exhibit 2(j)?

7 A I have, yes.

8 Q Okay. And these accurately reflect what was -- what took
9 place at that bargaining session?

10 A They do.

11 Q Okay. I'll have you look at General Counsel's Exhibit
12 2(k). What is this document?

13 THE COURT REPORTER: Bear with me for a moment, please.
14 Thank you. K as in kangaroo, Mr. Childerhose?

15 MR. CHILDERHOSE: Correct.

16 A This is a letter that I sent to Mr. Pascucci on February
17 5th of 2021.

18 MR. CHILDERHOSE: Okay, I would move for the admission of
19 General Counsel 2(k).

20 MR. PASCUCCI: No objection.

21 JUDGE ESPOSITO: Okay. General -- General Counsel Exhibit
22 2(k) is admitted. I'm sorry Mr. Pascucci, I'm afraid I cut you
23 off on the tape, did you have an objection to 2(k)? I don't
24 believe you --

25 MR. PASCUCCI: No -- no objection.



1 JUDGE ESPOSITO: All right. Thank you.

2 **(General Counsel Exhibit Number 2(k) Received into Evidence)**

3 Q BY MR. CHILDERHOSE: I'll have you look at General
4 Counsel's 2(1). This appears to be an email chain from
5 February 25th to March 8, 2021; is that -- is that correct?

6 A I'm just pulling it up. Would you mind repeating those
7 dates?

8 Q It's a two-page -- two-page document. It looks the first
9 email is from Ms. Pascucci to you dated February 25, 2021, and
10 then the last email, which is on page 1, is an email from you
11 to Mr. Pascucci dated March 8, 2021.

12 A Yes. I see the document.

13 Q I'd move the admission - and these are the emails between
14 you and Mr. Pascucci?

15 A They are, yes.

16 MR. CHILDERHOSE: Okay. I would move admission of General
17 Counsel 2(1).

18 MR. PASCUCCI: No objection, Judge.

19 JUDGE ESPOSITO: General Counsel Exhibit 2(1) is admitted.

20 **(General Counsel Exhibit Number 2(1) Received into Evidence)**

21 Q BY MR. CHILDERHOSE: During this time were there -- were
22 you communicating just through email or were there telephone
23 conversations? Were the parties communicating in any other
24 way?

25 A No. It was emails with attached letters at times and then



1 the telephone conversations, to my recollection, were limited
2 to the bargaining sessions.

3 Q Okay. I'll have you look at General Counsel's 2(m). Can
4 you identify this document?

5 A I apologize. It can be tough to hear. Is it N as in
6 Nancy or --

7 Q I'm sorry, M as in Mike.

8 A Certainly. So it's March as Exhibit (m) is again
9 bargaining notes. This time from a session that was held on
10 March 11th of 2021.

11 Q Okay. And have you -- have you reviewed these bargaining
12 notes?

13 A I have, yes.

14 Q Do these accurately reflect what was -- what occurred at
15 the meeting?

16 A They do, yes.

17 Q Okay. I'll have you look at the next -- and this -- this
18 was the next bargaining session that was held.

19 A That's right.

20 Q Following the February -- February 2nd meeting? Okay.
21 I'll have you look at General Counsel's Exhibit 2(n) and
22 also -- it appears -- and also 2(o). It appears that 2(n) was
23 attached to 2(o). We'll start with (n). Will you identify
24 General Counsel's Exhibit 2(n)?

25 A Yes. (n) is a letter dated March 30th of 2021 that I sent



1 to Mr. Pascucci.

2 Q Okay. And if you can look at General Counsel's Exhibit
3 2(o). Was -- was (n) -- was that attached to 2(o) to the March
4 30th, 2021, email in the email chain that is 2(o)?

5 A Yes, that's right. It was an attachment.

6 MR. CHILDERHOSE: I'll move the admission of 2(n) and
7 2(o).

8 MR. PASCUCCI: Judge, if I could have a second. I think
9 it's confusing the way these are arranged. I just want to make
10 sure that everything is here. I'd leave it.

11 JUDGE ESPOSITO: Okay.

12 MR. PASCUCCI: Yeah, no objection to 2(o) and 2(n).

13 Q BY MR. CHILDERHOSE: Okay. I'll have you look at General
14 Counsel's Exhibit 2(p).

15 JUDGE ESPOSITO: Okay, hold on.

16 MR. CHILDERHOSE: Sorry.

17 JUDGE ESPOSITO: General Counsel Exhibit 2(n) and 2 (o)
18 are admitted.

19 **(General Counsel Exhibit Numbers 2(n) and 2(o) Received into**
20 **Evidence)**

21 Q BY MR. CHILDERHOSE: Okay. Mr. Martin, can I have you
22 look at General Counsel's 2(p).

23 A Okay.

24 Q Can you identify this Exhibit?

25 A Yes, again looking at bargaining notes here this time for



1 a bargaining session held April 21st, 2021.

2 Q Okay. And have you reviewed these notes and are these
3 notes --

4 A I have, yes.

5 Q And are these notes an accurate reflection of what was
6 said at the -- at the bargaining session?

7 A Yes, they are.

8 Q Okay. And this was the party's sixth -- sixth meeting; is
9 that correct?

10 A That's correct.

11 Q Have the parties met since this bargaining session?

12 A We have not.

13 Q Okay. Has the Employer ever provided a counterproposal to
14 the proposal that the Union provided at the beginning of
15 bargaining?

16 MR. PASCUCCI: I object to the form of the question,
17 Judge, because I don't know if you need counters --

18 MR. CHILDERHOSE: I'm sorry, you're right. I'm sorry.

19 Q BY MR. CHILDERHOSE: Have you -- have you ever received a
20 comprehensive counterproposal from the Employer?

21 A No.

22 MR. CHILDERHOSE: Okay. I have no further questions, Your
23 Honor.

24 MR. PASCUCCI: Judge, before we start our cross, I'd like
25 to request a copy of an affidavit, if one was submitted to the



1 Board during its investigation, from Mr. Martin.

2 JUDGE ESPOSITO: Right. Mr. Childerhose, are there any
3 Jencks materials?

4 MR. CHILDERHOSE: Yep, I will email a copy of that
5 affidavit to Mr. Pascucci and Mr. DiLorenzo.

6 MR. PASCUCCI: Thank you, and then, Judge, could we have a
7 few moments to --

8 JUDGE ESPOSITO: Of course. How long would you like, Mr.
9 Pascucci?

10 MR. PASCUCCI: Maybe 15 minutes? We may not need all of
11 that time but would that be all right?

12 JUDGE ESPOSITO: All right. So let's go off the record
13 and come back at 10 after 11.

14 MR. PASCUCCI: Thank you, Judge. So does that mean we go
15 a breakout room?

16 JUDGE ESPOSITO: If you would like, I can put you and Mr.
17 DiLorenzo --

18 (Off the record at 10:55 a.m.)

19 JUDGE ESPOSITO: All right. Let's go back on the record.
20 Mr. Pascucci, cross-examination.

21 MR. PASCUCCI: Yes, thank you, Judge.

22 **CROSS-EXAMINATION**

23 Q BY MR. PASCUCCI: Mr. Martin, I just want to start with
24 the background of the case. Do you agree that there was an
25 initial election which the Region set aside and ordered a new



1 election because of objectionable conduct raised by the
2 Employer to the first election?

3 MR. CHILDERSHOSE: I object to the relevance, Your Honor,
4 it's also outside the scope of direct.

5 JUDGE ESPOSITO: Overruled. Go ahead.

6 A Yes.

7 Q BY MR. PASCUCCI: Okay. And so -- and then when the
8 second election was held, do you agree that the Employer filed
9 post-election objections to that one as well because some of
10 the arguments that the Employer made were from the -- dated
11 back to the first and some were new, do you recall that?

12 A I do.

13 Q Okay. And then when the -- when those objections were
14 overruled by the Region, the Employer appealed to the National
15 Labor Relations Board in Washington, correct?

16 A I don't recall if it was an appeal or a request for review
17 but functionally it's the same thing, yes.

18 Q Yes, I agree with you. I think it's the same. But that's
19 what --- so okay. So you remember that we -- in one way or
20 another, we sought review by the Board in Washington. Okay.
21 And then -- and then the Employer engaged in a technical
22 refusal to bargain after the Board in Washington disagreed
23 without the objections which resulted in a Court of Appeals
24 proceeding before the District of Columbia Circuit. Is that
25 your understanding of what happened?



1 A It is.

2 Q Okay. And the Charging -- and all of that takes time:
3 correct Mr. Martin?

4 A Excuse me. Yes, that did happen.

5 Q Okay. And there was no allegation in the Charging Party,
6 either back after the mandate was issued, there was no charge
7 filed then, and there was no allegation in the charge that was
8 filed in the case before us, suggesting in any way that the
9 Employer had engaged in bad-faith bargaining by virtue of the
10 fact that it sought those appeals; was there?

11 A No.

12 Q Okay. And you're not alleging that today, correct?

13 A That's right.

14 Q Okay. With respect to the bargaining notes -- I think
15 this -- maybe goes without saying but I just want to ask you
16 whether or not the notes that the Union prepared, Ms. Sanchez,
17 and I think that first meeting was another person in your --
18 your office, those are not -- those are not in the nature of a
19 verbatim transcript, correct?

20 A Not exactly verbatim, quite close, but not verbatim, no.

21 Q Well, I mean some of these calls were, I think you said
22 one of the meetings was 90 minutes, and I think others were 20
23 minutes or 30 minutes, but clearly a lot more was said then
24 what we see in those notes, correct?

25 A More words, but I believe the notes captured all of the



1 substance.

2 Q I agree with you. I -- I -- I think they do, too. But I
3 just want -- I'm just asking you for your testimony about
4 whether or not you are representing that those notes are the
5 entirety of the conversation or whether they are just a summary
6 of the conversation.

7 A Again, I don't believe it's a verbatim recording of it. I
8 think it's quite close.

9 Q Okay. With respect to that to timing, with respect to the
10 gaps between meetings, I mean, and particularly the sort of --
11 I don't know if it a year -- or roughly a year -- during
12 that -- during that time, the Union had made a decision not to
13 engage in further bargaining during the height of the pandemic,
14 correct?

15 A I believe you are referring to what I think was a several
16 month gap. I don't think it was ever a year gap. But yes, at
17 the height of the pandemic, the depths of the business
18 declined, I provided for a longer gap between sessions than
19 normal.

20 Q Right. And what I'm getting at is you're not accusing the
21 Employer of having ever refused to schedule a meeting when the
22 Union asked for one, are you?

23 A No, I'm not.

24 Q Okay. And that during that lengthy hiatus, however long
25 it was, there was no -- there was no request by the Union



1 during that lengthy hiatus to recommence bargaining which the
2 Employer declined, was there?

3 A That's correct.

4 Q So when the Union did decide to reach out and resume
5 bargaining, then the Employer agreed and rescheduled the next
6 meeting shortly thereafter, correct?

7 A That's accurate.

8 Q Okay. And then with respect to just the last question you
9 were asked on direct, about the parties not having met since
10 the session that happened, I think maybe it was in April, sorry
11 I don't have that date in front of me, but the Union has not
12 requested a meeting since then to resume contract negotiations,
13 has it?

14 A It seemed fruitless at that point given -- given where we
15 were, so no.

16 Q So right. So the Employer still has not ever refused,
17 even up to the present, ever refused to meet upon request with
18 the Union to negotiate, has it?

19 A That's correct.

20 Q Let's see. I'm trying to go back and forth in my computer
21 screen between -- just give me a second, please. I want to,
22 Mr. Martin, I just want to scroll through the notes and
23 possibly ask you a few short questions about some of the
24 dialogue between the parties, so bear with me, please.

25 Let me ask you -- let me ask you this. You understood the



1 Employer's position -- let me ask you this, Mr. Martin. In
2 these negotiations, did the Union ever make a counterproposal
3 to the Employer's proposals?

4 A The Union made its first proposal, it's complete proposal.
5 The Employer provided, I believe, it was six enumerated
6 counterproposals --

7 Q Excuse me. I'm sorry, Mr. Martin. That's not the
8 question. The question is, did the Union ever make a
9 counterproposal to any of the Employer's proposals?

10 A The Union did not counter those six proposals, no.

11 Q Okay. The only party in this -- in these negotiations who
12 were ever countered to the other sides proposals was the
13 Employer, correct?

14 A The Employer was the only party that provided any counter
15 in the form of those six enumerated items and only those six,
16 yes.

17 Q And is it true that I repeatedly said that if we just get
18 a response to those six, we could move on to other issues?

19 A No, that's not true. You wanted an agreement.

20 Q That's not true either. I apologize. I know where --
21 this isn't a debate. But are you alleging -- it's not in the
22 notes. Are you alleging that the Employer ever said that we
23 have to reach agreement on all of these issues before we move
24 to other issues?

25 A I don't believe you insisted on agreement on all six, but

1 you made it very clear that we had to get through those issues,
2 before you would move on and expand.

3 Q Are you -- are you testifying that the Employer ever said
4 that we have to reach agreement on all noneconomic items before
5 we can move to economic items?

6 A I don't believe you used the word all, no.

7 Q And isn't it true that -- I think you acknowledged, and I
8 think it's in the bargaining notes, that all the Employer said
9 was that in -- in -- in its experience, in my experience, that
10 it's more productive, and it's usually how parties do this, is
11 to focus on noneconomics before proceeding to economics?

12 A You did say that, yes.

13 Q Okay. So the idea was let's see -- let's see what we can
14 get agreed to in the noneconomics, and maybe that will be
15 easier and we can get things accomplished and narrow our
16 differences before we go on to the tougher issues and/or the
17 economic issues. Is that -- is that your understanding of what
18 we were -- I was saying during those negotiations?

19 A My understanding of -- of your intent on those?

20 Q No, what I was saying. Not my intent. What I actually
21 said to you?

22 A I don't specifically recall you saying it like that, but
23 yes, I understood your goal to be that you wanted to get
24 through a subset first.

25 Q Well, okay. I think the notes will speak for themselves



1 and the correspondence. But is it -- let's see, what's another
2 question? Isn't it also true, Mr. Martin, that you
3 understood -- that you indicated, more than once, that you
4 acknowledged that parties often negotiate first contracts in
5 the manner that I was suggesting?

6 A Not certain if I used often, but yes, I certainly
7 acknowledge that the parties do it that way at times.

8 Q Okay. And is also true that you said the Hotel Trades
9 Council does not do it that way, that you preferred it -- to
10 provide Employers with an entire contract at the outset of
11 negotiations, correct?

12 A That's correct.

13 Q And is true that in this case, and I assume in other cases
14 where the Hotel Trades Council has bargained a first contract,
15 that your -- the thrust of your position is that the newly
16 united employers has to accept and agree to the industry-wide
17 agreement?

18 A I'm sorry, Ray. I missed that last part -- would you
19 repeat?

20 Q Yeah, sure. So I know it was a long question so sorry
21 about that. Is it true that the thrust of the Union's position
22 is that this Employer and any other newly united Employers
23 needs to accept and agree to the IWA, the industry-wide
24 agreement?

25 A I don't really want to speak to other employers in other



1 negotiations.

2 Q That's fine. Let's limit it to this negotiation.

3 A For this one, yes, certainly. The thrust of my proposal,
4 which is in the first meeting, was that we were hoping the
5 Hotel would join on to this mature pattern agreement with the
6 certain changes that we had put into that memorandum.

7 Q And is that why -- because the Union was taking the
8 position that most of the language in the contract was also set
9 by virtue of the industry-wide agreement, and therefore, should
10 be simply accepted by the Employer, that you did not want to
11 actually talk about any of the other -- any of the Employer's
12 proposals?

13 A No, that's not accurate.

14 Q Well, you never did talk about the Employer's proposals,
15 right? In substance, you simply said you wouldn't respond, you
16 provided no counter, et cetera.

17 A As I said many times in our meetings, I was not able to
18 respond to a six-point counterproposal when I had given you a
19 complete contract, and I needed a complete proposal in order to
20 fully analyze and -- and respond to that in a complete way.

21 Q So you never did engage in any substantive discussion
22 about the Employer's proposals, correct?

23 A No, that's not correct. We talked through that. I asked
24 you questions about them, and you explained them to me.

25 Q Okay, that's fair. You never gave -- but you never did



1 give any -- any kind of a counter or any kind of a response,
2 other than saying we have to make a complete contract proposal
3 at the outset of negotiations for an initial contract, correct?

4 A That's right, yes.

5 Q Okay. And do you also recall that, you know, I pushed
6 back on the idea that you can't, it's not possible for you to
7 negotiate any of this -- these subjects without the context of
8 an entire contract proposal form the Employer by suggesting
9 that we should be able to talk about the preamble, and we
10 should be able to work -- and be able to talk about
11 nondiscrimination and some of these other items that when the
12 Employer counters and that you don't need context -- you don't
13 need to have context in the overall contract to be able to
14 negotiate over some of those topics?

15 A Yes. I believe you described your position on that
16 similarly, yes.

17 Q Okay. And do you also recall, and I think it's in the
18 correspondence in the notes, but do you also recall me making
19 the point that, in my experience, for what it's worth, and I
20 think I've shared a lot of first contracts that with respect to
21 some of the more difficult noneconomic issues that the parties
22 may butt heads over, that in my experience it was helpful to
23 clear away as many of the -- of the easier topics as possible,
24 and then when you get down to the sticking points that often we
25 open up the economics at that point, and that dealmaking



1 happens that sometimes a party who is previously unwilling to
2 make a concession on a noneconomic item, might be more willing
3 to do it in the context of trying to get to a contract and the
4 parties are down to the -- the tougher issues and putting up
5 economics. Do you recall all of that sort of explanation?

6 MR. CHILDERHOSE: Your Honor, I'm going to object. It
7 just feels like Mr. Pascucci is testifying to his questions in
8 a way (audio interference) --

9 JUDGE ESPOSITO: That was -- that was -- that was quite a
10 lengthy question, Mr. Pascucci.

11 MR. PASCUCCI: I agree, Judge, but the witness, I think,
12 was about to answer before the objection. I think, if we could
13 read it back, I think -- I think it's a coherent question. It
14 may be -- it may cover a lot of territory.

15 MR. CHILDERHOSE: But what -- can we -- can we limit this
16 to a specific bargaining session, or you know, it's very --

17 MR. PASCUCCI: No, I'm asking these generally because
18 there weren't a lot of bargaining sessions, frankly, and we --
19 we talked about these same topics every time, except for the
20 first meeting which was introductory. But so Judge, if I -- if
21 the witness says he can't understand that I guess that's one
22 thing, but I thought -- I thought he -- he was about to answer.

23 JUDGE ESPOSITO: Okay, Mr. -- Mr. Martin, do you
24 understand the -- the question?

25 THE WITNESS: I actually was -- what I was about to say,



1 was to request that you break up the question a little bit,
2 if -- if it's possible.

3 Q BY MR. PASCUCCI: Do you recall me explaining that, in my
4 experience with bargaining first contracts that, often there
5 were some difficult noneconomic items that would be left open
6 and then when the parties entered into the economic phase, they
7 would often make deals and trade things, and that's how you get
8 to a contract ultimately?

9 A I recall you stating that, yes.

10 Q So there was never -- so in other words, the Employer
11 never said we -- we have to settle all noneconomics first. We
12 have to settle these six first; it was simply a desire to build
13 a contract going through it -- a subset of topics one at a
14 time. Is that your understanding of what I was saying in
15 negotiations?

16 A It's not really. I was on top of that. The fact that I
17 asked countless times for expanded and an additional proposal
18 and you refused to do that.

19 Q Well, clearly the Union wanted to negotiate the way you
20 wanted to negotiate. In other words, you -- you gave us an
21 industry-wide agreement, 109 pages, I think it is, with a
22 memorandum of understanding, another 13 pages, and you wanted
23 us to simply accept that, correct?

24 A Of course, I'd like for you to accept my initial proposal.

25 Q And -- and what I was saying was -- well, we need to --



1 first of all, that the -- that the Hotel, in this case, did not
2 agree to accept all of that, and that we might need to
3 negotiate our own contract, and that in order to build a
4 contract from nothing because it's an initial contract, we felt
5 it would be more productive to deal with a limited set of
6 issues at a time, and then move to the next set, right?

7 A Well, you did say that, yes.

8 Q Okay. And you just didn't want to do it. You -- you --
9 you never -- you never were willing to even provide any counter
10 to the Employer's counters, correct?

11 A I was insistent on the Employer providing a proposal that
12 covered all mandatory topics, yes.

13 Q And the -- and the Employer -- and you understood -- the
14 Employer never refused to -- never said that it would refuse to
15 negotiate over any mandatory subjects. It was simply a
16 question of sequence and -- and -- and how -- how we would get
17 there, correct?

18 A You never proposed it. It was years long bargaining.

19 Q Well, wait a minute. Wait a minute. It wasn't years'
20 long bargaining, excuse me. But when you say it was years long
21 bargaining, we just established that the big hiatus was due to
22 the pandemic, and that was the Union's decision, and that all
23 other meetings were held in accordance with the Union's
24 request. You know, we agreed to schedule things promptly, as
25 soon as the request. At the end of each meeting, we set the

1 next date. You're not contesting any of that, are you Mr.
2 Martin?

3 A I am not, no.

4 Q Okay. So the bottom line is that, you know, in the
5 limited amount of bargaining that did happen here for the --
6 for the reasons we've discussed, the Union was simply unwilling
7 to provide any counter to the Employer's counters without -- in
8 other words, the Union made it a condition of bargaining that
9 it would not negotiate over any of the Employer's counters
10 unless, and until, the Employer countered on the whole 115
11 pages that the Union had proposed, correct?

12 A I was insistent on a complete proposal covering all
13 mandatory topics.

14 Q So in other words, you made it a condition of bargaining
15 that the Employer had to provide an entire contract proposal,
16 up front, before you would provide any counters, or entertain
17 any proposals that the Employer had made, correct?

18 A I likely would have accepted, you know, something closer
19 to what we proposed, as long as (audio interference) --

20 Q That's not the question what you likely would have done.
21 The question is what did you did do, which is you made a
22 condition of bargaining over the subjects that the Employer
23 countered on, that the Employer must counter on everything,
24 right?

25 A I -- I requested, repeatedly, a complete proposal



1 including all mandatory topics, yes.

2 Q And -- and essentially you declined to engage in any
3 further negotiations unless that happened, unless that
4 condition was satisfied, correct?

5 A Correct.

6 MR. PASCUCCI: Okay. I don't think I have any other
7 questions, Judge, but I would like to have an opportunity to
8 confer with Mr. DiLorenzo briefly, off-line, before we close
9 the cross.

10 JUDGE ESPOSITO: Okay.

11 MR. DILORENZO: Just a few minutes, Judge. We can do it
12 by phone if you want to stay here. I can just call Ray.

13 JUDGE ESPOSITO: Okay. Is that all right, Mr. Pascucci?

14 MR. PASCUCCI: Yeah, of course. Absolutely. I'll just
15 mute and turn off the video and then we'll talk separately.

16 JUDGE ESPOSITO: Okay, turn -- yes. Mute yourselves and
17 turn off your video. Okay, great.

18 MR. PASCUCCI: Good.

19 JUDGE ESPOSITO: Thanks.

20 (Off the record at 11:33 a.m.)

21 JUDGE ESPOSITO: Okay. All right, Mr. Pascucci, anything
22 else?

23 MR. PASCUCCI: Not at this time, Judge.

24 JUDGE ESPOSITO: Mr. Childerhose, do you have any redirect
25 examination?



1 MR. CHILDERHOSE: I do not, Your Honor.

2 JUDGE ESPOSITO: Okay. Thank you very much, Mr. Martin,
3 you are excused.

4 THE WITNESS: Thank you.

5 MR. PASCUCCI: Judge, I have a question about
6 housekeeping. Did the GC offer GC-3 -- General Counsel -- did
7 the General Counsel offer GC-3 yet for admission into evidence?

8 JUDGE ESPOSITO: The -- the IWA agreement?

9 MR. PASCUCCI: Right.

10 JUDGE ESPOSITO: I don't think so yet. Have you had an
11 opportunity to review it, Mr. Pascucci?

12 MR. PASCUCCI: Yes.

13 JUDGE ESPOSITO: Okay. Is it -- is that the version that
14 was provided to you in 2020?

15 MR. PASCUCCI: Yes, Judge.

16 JUDGE ESPOSITO: Okay. All right. So Mr. Childerhose,
17 are you offering the IWA agreement as General Counsel Exhibit
18 3?

19 MR. CHILDERHOSE: I am, Your Honor.

20 JUDGE ESPOSITO: Okay. All right. And Mr. Pascucci, do
21 you have an -- an objection?

22 MR. PASCUCCI: No, Your Honor.

23 JUDGE ESPOSITO: Okay. So then General Counsel's Exhibit
24 3 is admitted.

25 **(General Counsel Exhibit Number 3 Received into Evidence)**



1 MR. PASCUCCI: Judge, I apologize for this. I think I
2 should ask Mr. Martin one more question if you would allow it.

3 JUDGE ESPOSITO: Okay. I don't -- I don't dis -- Mr.
4 Childerhose, do you have a problem with Mr. Martin answering
5 another question?

6 MR. CHILDERHOSE: No, I don't object.

7 MR. PASCUCCI: Thank you.

8 JUDGE ESPOSITO: Okay. All right.

9 MR. PASCUCCI: I believe, I'm not sure if this -- did we
10 mark our Exhibits, Respondent's Exhibits --

11 JUDGE ESPOSITO: The only one that's marked at this point
12 is Respondent Exhibit 1, which is the notes of the negotiating
13 session that's already in evidence.

14 MR. PASCUCCI: Okay, then I believe everything is, well
15 no, the Employer's notes though, that's not -- it was evidence.
16 It was stipulated to, but I guess. So I believe that all the
17 other Respondent Exhibits that we submitted yesterday were
18 repeated in what the GC has introduced into evidence so the
19 only -- so the last one would be Employer's 1, well, the only
20 additional one, with Respondent's 1, which is the Employer's
21 bargaining notes. Right? I don't have it marked, so I just
22 want to confirm that that's what already recognizes as
23 Employer's -- Respondent's Exhibit 1?

24 JUDGE ESPOSITO: Yeah, yeah -- I -- I -- I've already
25 admitted that into evidence.



1 MR. PASCUCCI: Thank you.

2 **RESUMED CROSS-EXAMINATION**

3 Q BY MR. PASCUCCI: So Mr. Martin, did you have an
4 opportunity to review the Employer's bargaining notes in this
5 case which are set forth in Respondent's Exhibit 1?

6 A I did.

7 Q All right. And I realize they are shorter, certainly than
8 the Union's notes, but did -- would -- did you find anything in
9 those notes that you believe was inaccurate?

10 A I did not.

11 MR. PASCUCCI: Okay. That's all, Judge.

12 MR. DILORENZO: Your Honor, could I just have one second
13 with Mr. Pascucci, one second?

14 MR. PASCUCCI: Okay. Are you going to call me?

15 JUDGE ESPOSITO: All right, go ahead.

16 MR. DILORENZO: Thank you, Judge, sorry.

17 (Off the record at 11:38 a.m.)

18 MR. PASCUCCI: So Judge, that's the end of cross. Thank
19 you for that.

20 JUDGE ESPOSITO: Okay, so Mr. Childerhose, do you have any
21 additional redirect?

22 MR. CHILDERHOSE: I do not.

23 JUDGE ESPOSITO: Okay. All right. Thank you very much,
24 Mr. Martin, for -- for -- for answering those additional
25 questions. Okay.



1 General Counsel, anything else for your case?

2 MR. CHILDERHOSE: No further witnesses. So we'll rest for
3 case-in-chief.

4 JUDGE ESPOSITO: Okay. Mr. DiLorenzo? Mr. Pascucci?

5 MR. PASCUCCI: Do you want me to do the opening, Lou, or
6 do you want to? I guess I'm supposed to, right? Cause I'm --

7 MR. DILORENZO: Yeah, yeah. Yeah.

8 JUDGE ESPOSITO: It's -- it's -- it's -- it's up to you.
9 You -- you don't even have to do an opening if you don't --

10 MR. PASCUCCI: No, no.

11 JUDGE ESPOSITO: Go ahead if you want.

12 MR. DILORENZO: You should do it, Ray.

13 MR. PASCUCCI: All right. It's going to -- I'll keep it
14 brief, Judge.

15 JUDGE ESPOSITO: Okay.

16 MR. PASCUCCI: So, you know, the General Counsel in his --
17 the counsel for the General Counsel in his opening statement
18 tried to paint a picture that the Employer had refused to
19 bargain for -- you know, prior to the onset of these
20 negotiations for a year or for longer. That was not -- none of
21 that was accurate. The -- as Mr. Martin acknowledged on cross,
22 those were all legitimate procedural appeals that the Employer
23 made, and as now is on the record, there was a first election
24 that was set aside. There were questions about the second
25 election, et cetera. So the idea that years have gone by or if



1 the Board -- if the G.C. intends to cite cases in its brief
2 saying, well, where things have dragged out and the Employer's
3 been slow and tried to delay -- none of that -- that -- those
4 cases would be applicable to what happened here. There was no
5 bad faith -- delay, bad faith, refusal to bargain, et cetera.
6 So the parties did bargain, when the bargained, you know, and
7 as Mr. Martin also acknowledged, the Employer always, you know,
8 readily agreed to schedule a meeting upon whenever the Union
9 requests one for negotiations, and so we proceeded at -- at a
10 pace that really the Union set, which was fine.

11 But when the parties bargained, basically the difference
12 between the two respective positions boiled down to that Mr.
13 Martin wanted to negotiate this contract the way he wanted to
14 negotiate it or the way the Hotel Trades Council wanted to
15 negotiate it, which was give the Employer an entire contract,
16 which was their boilerplate contract with a few -- a few
17 specific terms and an MOU, memorandum of understanding, and
18 basically the Employer had to accept that. And if you read the
19 notes, especially from the first meeting, you know, I -- I said
20 are you telling us that, you know, we just have to accept this
21 and acquiesce to the Union's position that -- that -- that
22 there's no back and forth, there's no willingness on the
23 Union's part to acknowledge that this is a -- this is a new
24 contract. It's a separate contract but only will be between
25 the Union and this hotel and that this is a small -- it's a

1 single hotel. It's a standalone. It's not part of a large
2 chain. It's not a large hotel. It's in Brooklyn. It's not in
3 Manhattan, et cetera. That you're telling us we're not going
4 to -- you're not going to be willing to negotiate the CBA just
5 for this property? And the answer is absolutely not. And the
6 answer is absolutely not. The Union would not agree to that.
7 So the Union basically took the position that its -- its
8 massive, you know, 108-page, 100-year-old contract, industry-
9 wide contract, was a take-it-or-leave-it proposition and that
10 when the Employer attempted to bargain over discrete subjects
11 to try to build a contract in a way that, frankly I believe,
12 Judge, almost every -- at least in my experience, and I've been
13 doing this a very long time -- almost -- and -- and I believe
14 it's true that, across all of the labor relations community,
15 that this is how you negotiate. You typically start with
16 noneconomics, you work through as many as you can, you try to
17 get tentative agreements. The Union wouldn't -- wouldn't even
18 accept a ground rule that says we're going to have written
19 signed tentative agreements. And you try to go issue by issue,
20 and eventually you cover all the issues. And eventually you
21 have a contract. So what we were trying to do wasn't novel, it
22 wasn't unique, it wasn't -- it was simply what is always done,
23 in my experience, unless the Union has taken the position that
24 we're going to -- you know, we're going to not really bargain a
25 separate a separate CBA for you, that we're going to take this



1 existing master agreement and essentially shove it down your
2 throat, and we didn't want to -- we didn't want to acquiesce to
3 that. And I think we had a right to negotiate our own
4 collective bargaining agreement and negotiate it in a way that
5 is traditional and done almost universally across the labor
6 relations community for 85 years or the history of the National
7 Labor Relations Act and that the Union -- and then, again, I
8 make the point which I did on cross and Mr. Martin
9 acknowledged, the only party in these negotiations who ever
10 failed to provide any counter to the other side's proposals was
11 the Union, not the Employer. We countered at least on those
12 six and wanted to have a dialogue about those six before we
13 moved to other issues.

14 So I think there's a legal question here, Judge. And the
15 legal question is, you know, is it bad faith to try to
16 negotiate in the manner that-- that I -- that the Employer in
17 this case tried to negotiate? Which is to try to build a
18 contract working through, you know, a -- a series of issues
19 at -- at a time before moving onto another set, not necessarily
20 to the point of an agreement but at least to have a dialogue
21 and maybe resolve some of them. Or is it -- or is the Union
22 entitled to demand at the outset of negotiations for an initial
23 contract that the Employer must provide counters on every topic
24 including -- on every topic in the contract, including
25 economics. And -- and the other part -- to me that's a legal

1 issue. The other part -- and I don't -- I don't know if there
2 are cases on that, Judge. I know I didn't -- couldn't find
3 any. Mr. Martin said he'd send some to me, but he didn't. I
4 don't know if there are cases on that. I know there are cases
5 about other things that the General Counsel will argue apply,
6 but I don't think they do. So anyway, we'll address all that
7 in our -- in our brief of course.

8 I think that's all. I'm trying to think of anything else.
9 I think I made all my points, Judge. Sorry for the lack of
10 a -- maybe well -- well-crafted opening statement, but that's
11 our opening.

12 JUDGE ESPOSITO: Okay. And so would you like to call a
13 witness, Mr. Pascucci, Mr. DiLorenzo?

14 MR. PASCUCCI: Judge, I'm going to have Mr. DiLorenzo call
15 myself as a witness.

16 JUDGE ESPOSITO: Okay. All right.
17 Whereupon,

18 **RAYMOND PASCUCCI, ESQ**

19 having been duly sworn, was called as a witness herein and was
20 examined and testified, telephonically as follows:

21 JUDGE ESPOSITO: Let me just remind you about a few
22 things. Listen carefully to each question before answering.
23 Do not start speaking or answering until you're sure the
24 question is finished so that there's not overlap on the tape
25 for the transcriber to deal with. If someone objects, do not



1 answer the question. Stop and wait for a ruling. Let us know
2 right away if you're having trouble with your audio or video.
3 Interrupt whatever else is going on, and tell us if you're
4 having problems or waive your hand in front of the camera. If
5 you do lose your audio and video completely, check your power
6 and internet connections and reconnect or reboot if necessary,
7 then try to join the hearing using the same link and numbers
8 you were sent next (sic) week.

9 THE WITNESS: Understood, Judge. Thank you.

10 JUDGE ESPOSITO: Okay. Go ahead, Mr. DiLorenzo.

11 **DIRECT EXAMINATION**

12 Q BY MR. DILORENZO: Thank you, Your Honor. Mr. Pascucci,
13 can you give us your name, your full name, and your title?

14 A Yep. Raymond J. Pascucci. I'm a member of Bond,
15 Schoeneck -- the law firm of Bond, Schoeneck & King, PLLC, and
16 I was the labor counsel in this case for the Employer.

17 Q And as labor counsel --

18 JUDGE ESPOSITO: I'm -- I'm -- I'm sorry, let me just
19 interrupt you, Mr. DiLorenzo, because I realized I didn't ask
20 Mr. Pascucci to spell his name for the record, which -- which
21 is usually helpful. Can you just do that, Mr. Pascucci?

22 THE WITNESS: Absolutely. Yes, it's P-A-S-C-U-C-C-I.

23 JUDGE ESPOSITO: Okay. Thank you. Go ahead, Mr.
24 DiLorenzo.

25 Q BY MR. DILORENZO: Mr. Pascucci, how long have you been



1 employed at Bond, Schoeneck & King, the law firm?

2 A I joined Bond, Schoeneck, & King in February of 1987.

3 Prior to that I was with Morgan, Lewis & Bockius, another law
4 firm, from 1985 to 1987.

5 Q And your educational background?

6 A My law -- I went to both undergraduate and law school at
7 Cornell.

8 Q And how long have you specialized in labor relations?

9 A The entire time, so 30 -- almost 37 years, I believe it
10 is, at this point.

11 Q Any experience as a professor teaching labor relations?

12 A Yes. I cotaught a course for four or five years at the
13 Maxwell School of Government at Syracuse University, a -- a
14 course on collective bargaining. And we were talking to --
15 that is -- that school is a very renowned school, and our --
16 our students were, for example -- we had a mayor from a city in
17 Japan, we had a lot of international folks who were officials,
18 mostly public sector, I guess all probably public sector,
19 governmental officials from other countries as well as from the
20 United States, who -- who wanted to learn about collective
21 bargaining and how it works here.

22 Q And how many years have you -- I'm sorry. You -- you said
23 that you were the labor attorney in this case for the Employer.
24 What role did you serve, if any, in the negotiations with the
25 charging party in this case?



1 A I was the chief spokesperson for all of the negotiations.

2 Q And you attended all the bargaining meetings?

3 A I did.

4 Q You -- roughly how many years have you been negotiate --
5 how many years have you served as chief spokesperson for labor
6 negotiations, different Employers?

7 A Sorry. I think my -- I turned that back on so you and I
8 could call each other -- now it's off.

9 JUDGE ESPOSITO: Okay. Thank you.

10 THE WITNESS: Yeah. I think that my -- the first time --
11 I started practicing law in 1985. I second chaired on a couple
12 of negotiations almost immediately in the fall of '85. I think
13 my first negotiation that I did on my own was in '89, and since
14 that time I've done -- I know I've done over 200 collective
15 bargaining agreements. I do about five to eight -- I've done
16 about five to eight CBAs per year. This year, I'm doing more
17 like 10 or 11 for the -- for the whole time.

18 Q BY MR. DILORENZO: And have any of those been first
19 contracts?

20 A At least two dozen. I could try to -- I was trying to
21 name them in my head, and I got up to about 24 or 5 first
22 contracts in multiple industries that I've done.

23 Q Is there anything significant about a first contract
24 versus --

25 A Absolutely.



1 Q -- a renewal of an existing contract?

2 A Yes. Anybody who has practiced labor law knows that
3 there's a world of difference between an initial labor
4 agreement and a successor agreement. The negotiations for
5 successor contracts are a lot simpler. It's not always easy to
6 agree because sometimes the parties have economic --
7 disagreements usually over economic issues in successor
8 negotiations. But in successor negotiations, the entire CBA,
9 all of the language from A to Z has already been agreed to and
10 there may be some proposed modifications, but they're generally
11 very minor. And mostly the focus is on what are the wages
12 going to be for the next three years or the next however long
13 the term of the new agreement will be and/or maybe some benefit
14 issues.

15 But in a first contract, the parties start with a blank
16 piece of paper. All of the language which is going to be the
17 foundation for the relationship, probably for decades or for,
18 you know, eternity, needs to be worked out. And so you -- and
19 so my experience in first contracts is it's a much more com --
20 you know, more difficult process. It takes longer. It's
21 harder because you're developing this template. And
22 oftentimes, you know, the Union has its own template,
23 boilerplate. Let's say that it wants the employer to simply
24 accept, and if the employer does, that's fine. I've actually
25 done a couple of first contracts where we settled it in a day



1 or two because the employer was willing to do it in those
2 cases. But if the employer wants to negotiate its own
3 collective bargaining agreement, which it has a right to do,
4 that involves a -- a lot of work by both sides to craft a
5 document that ultimately is going to be the CBA and the basis,
6 not just for the first CBA, but all CBAs thereafter.

7 Q Did you -- there -- there's been testimony from Mr. Martin
8 concerning the proposal that was given to you before the first
9 bargaining session. Do you remember that?

10 A Yes.

11 Q He was asked on direct examination if the Employer
12 presented any counter proposal to that document that was sent
13 to you. Was -- was it a matter of hours before the meeting
14 started?

15 A I don't even -- I don't remember exactly. I think it was
16 pretty much right when the meeting started. But as Mr. Martin
17 subsequently testified, that first meeting was introductory in
18 nature. When we received their proposals, which were as, you
19 know, very lengthy and you know, was a lot to absorb, I said to
20 Mr. Martin in that first negotiation, we're going to need some
21 time to -- to review this, and he said, of course, of course.
22 I understand. And nobody -- there was no expectation, I don't
23 believe. I don't think it would be normal, nor do I think Mr.
24 Martin, you know, had an expectation that we would give
25 counters that very first day after just seeing their proposal,



1 so we -- both sides said let's schedule another meeting, and
2 then we scheduled another meeting.

3 Q Did you -- after that first meeting, did you consider the
4 industry-wide agreement, the IWA, that was given to you
5 together with the rider?

6 A Absolutely, I for -- first of all, I forwarded it to Marc,
7 principal that was the owner of the business, and you know, he
8 reviewed it, and I reviewed it, and we talked about it. And
9 you know, as I pointed out to Mr. Martin in the counters that I
10 gave him at the next meeting -- that I gave the Union at the
11 next meeting, some of the language, even though we only covered
12 the six -- we were starting out with what we thought made
13 sense. We started out with a set of proposals that we thought
14 could lead to early tentative agreements and give us some
15 momentum in going forward from there, et cetera. But I pointed
16 out to Mr. Martin that some of the language that was in our
17 counters was out of his document, and it -- and I remember
18 specifically at one point him saying, well, I don't recognize
19 this. And then he looked at his own proposal, and he -- and he
20 found the sentence that we had put in our proposal and oh, I
21 see it's there. And I said yeah, it's there with a lot of
22 other things that we didn't put in ours. So -- but yes. We
23 did consider those, and we -- and the intention -- what we did
24 in that first set of counters and what our intention was to do
25 with respect to all the other subjects covered by that

1 proposal, was to -- to agree to whatever we could agree to out
2 of their document while trying to also maintain a separate
3 collective bargaining agreement that we thought would make
4 sense for a small, single hotel in Brooklyn versus, you know,
5 an entire industry which is driven primarily, frankly, by very
6 large hotels in Manhattan.

7 Q Did you explain to Mr. Martin at any time during any of
8 these negotiating sessions after you considered the IWA as to
9 why you didn't think it was applicable to your particular
10 Employer?

11 A Yeah, I mean that's -- we talked about that a lot, and
12 what we were saying was that, you know, first of all the
13 economics in Brooklyn are completely different, and -- and
14 this -- some of this we're -- when I say the economics, we're
15 kind talking about pre-pandemic, because the pandemic was
16 devastating for everybody. But pre-pandemic and for as far
17 back as anyone, I think, can remember, the -- the economics are
18 very different for a Brooklyn-based hotel versus a Manhattan-
19 based hotel. And you know, in terms of room rates, you know,
20 we talked about the fact that the average room rate, I think,
21 in Brooklyn was, at the time, pre-pandemic, was maybe in the
22 mid-100s. The average room rate in Manhattan was over 400.
23 But the occupancy rates in Manhattan were ver -- in those days,
24 pre-pandemic, were a lot higher than they were in Brooklyn.
25 But the labor market was different. Frankly, the workers who

1 want to work in a Brooklyn hotel generally don't want to
2 commute into Manhattan. They -- they -- they work there for a
3 reason, because they live there, and it's convenient. And so
4 the -- it's -- so there's a world of difference between,
5 especially large, you know, 4 or 500, 600, and bigger, hotel --
6 room hotels in Manhattan, and our little hotel, I think -- and
7 I forget now, frankly. I should have looked this up before
8 today, but I think there's maybe 60 hotel -- 60 rooms in this
9 hotel. It's a small hotel. And it operates under the
10 Brooklyn -- and I want to explain this too, -- which we talked
11 about a little bit in bargaining. It's called a Brook -- it's
12 branded as a Brooklyn Fairfield Inn Hotel. I mean, I'm sorry,
13 Brooklyn. It's a Marriott -- Fairfield Inn by Marriott Hotel.
14 That's the brand, but it's -- but this is an independent hotel
15 which is operating under that brand through a license where
16 they agree certain standards. But it's really a -- a -- its
17 own entity, and it's not -- Marriott hasn't -- the
18 International Marriott Company really has nothing to do with it
19 other than allowing the brand. But so we talked about all of
20 that and said that this industry-wide agreement was written for
21 these very large hotels and with massive staffs and resources,
22 and you know, all -- and all the Union kept saying, in that
23 first meeting in particular was, you know, you think you're
24 special. You're not special. You have to agree to it too.
25 We've got other small hotels who agreed to it. It works for



1 everybody. You may not think it does, but it works for
2 everybody, so you have to agree to it. And -- and so what we
3 tried to do in response to that was say, no, we don't want to
4 agree to all this. Here's a set of proposals, and let's --
5 let's work through these and try to build a contract.

6 Q Did you -- did you ever indicate that until agreement was
7 reached -- I -- were there six items that you countered?

8 A I think so.

9 Q Did you ever indicate during bargaining that until an
10 agreement was reached on those six items you would not move any
11 further with respect to negotiating any mandatory subjects of
12 bargaining?

13 A Absolutely not. In fact, I -- I said to Mr. Martin,
14 you're the ones who are putting conditions on -- setting up
15 roadblocks and putting conditions on bargaining, not the
16 Employer, in these -- in this case. All we've said is,
17 here's -- here's some counters. Let's get a response to those
18 counters. I told him that, you know, we -- we would go to
19 another set, whether we settled these or not. Let's get a
20 response. We'll move on. The Union just wouldn't respond to
21 anything, and the Union's stance was, you're going to accept
22 the -- the boilerplate -- the whole master agreement. I
23 explained, and I think Mr. Martin acknowledged some of this on
24 cross-examination, that in my experience parties would often
25 work through the easier issues first, get TAs on those, then

1 move on to other issues that, in the end, oftentimes the
2 biggest sticking points on the noneconomics side would still be
3 open. Then you'd get into the economics, and you'd start to
4 make deals and trade things off, and that's how you build a --
5 in my experience, for what it's worth, that's how you do a
6 first contract. That's how you build a contract. You know,
7 and I understand that the Hotel Trades Council would rather not
8 do it that way because they have the master agreement, and they
9 want everybody to accept the master agreement.

10 Q Did you ever -- did you ever indicate that you would
11 refuse to negotiate economic items until all noneconomic items
12 were completed?

13 A I did not. In fact, what I was just saying was the
14 opposite of that. It was that I acknowledged -- I recognized,
15 and I -- I said I would expect that in the end we'll be
16 wrestling with economics alongside some of the remaining open
17 noneconomic issues.

18 Q Did you ever receive any counterproposals to the six items
19 that you submitted to the Union?

20 A Never.

21 Q Did they ever explain to you why they were unwilling to
22 agree to those --

23 A The only expla --

24 Q -- or why they had no counterproposals to yours? Did they
25 indicate, you know, we can't agree to number 3, Ray, because it

1 doesn't include X, Y, Z. Did they give you any explanation for
2 the refusal to provide a counterproposal or refusal to agree to
3 any of your proposals?

4 A I don't believe there was a substantive discussion about
5 what our proposal said or didn't say. The -- the explanation
6 which was repeated multiple times was -- as Mr. Martin
7 testified earlier, was we can't respond to any of these until
8 we've seen the whole thing, the whole counterproposal and the
9 whole contract, because otherwise it's out of context. And
10 what Mr. Martin said several times was, how do I explain to my
11 bargaining committee mem -- my bargaining unit members what our
12 position should be on something like nondiscrimination without
13 knowing what the pay rates are going to be? And that, you
14 know, that's what they cared about primarily, I believe Mr.
15 Martin said at one point. But his basic explanation was we
16 need to see everything before we can respond to anything.
17 That's never -- that -- you know, I -- I heard him say that
18 more than once. I didn't agree with it because I -- and I
19 didn't believe it, because I know that it's -- in my experience
20 I've never had that argument made. It's -- again, it's the way
21 contracts are negotiated, in my experience, first contracts at
22 least. And you know, the bargaining committee members usually
23 understand that you -- that you work through issues one by one,
24 and you don't, you know, you don't have to have an entire
25 contract in front of you to under a discrete issue.



1 Q Was the non -- let's talk about that nondiscrimination
2 proposal. Did that pretty much mirror the legal obligations of
3 the Employer with respect to nondiscrimination?

4 A Absolutely. The difference between the Union's version of
5 that and our version was ours was a paragraph, and theirs was,
6 I think, at least a full page if not multiple pages. And you
7 know, and -- and ours captured the law, I believe, in its
8 entirety, and -- and it should've been -- in my opinion, it
9 should've been noncontroversial, but -- but it was simpler.
10 And one of the things that we had said to the Union in the
11 first meeting, I believe, or maybe in the second meeting was
12 that, you know, one of our goals -- one of the Employer's goals
13 in these negotiations was to end up with a -- a simple document
14 that everyone can understand and read, not legalese, that it's
15 plain English, that it's straightforward, and so our -- you
16 know, our counters that we did submit to the Union for
17 consideration, were of that nature. They were -- they were
18 short and to the point. They -- and obviously, we were -- that
19 wasn't a final proposal on our part by any stretch, it was an
20 opening proposal, so we would negotiate over adding things and
21 modifying things but that the goal overall was to try to
22 simplify. And the Union's document is anything but simple.

23 Q There was -- Mr. Martin was asked some questions by the
24 General Counsel, and some of the emails that were referenced in
25 his testimony deal with ground rules. You proposed some ground



1 rules. Is that typical in negotiations for first contract?

2 A Yeah, I -- I think it is, and any -- and often in
3 successor negotiations as well, it's very common. Probably
4 more often than not, the parties will start by discussing some
5 ground rules, and usually, it's readily -- they're readily
6 agreed to, and usually, if it's a successor negotiation, you
7 just use the one from last time and maybe update the dates or
8 whatever. But the ground rules that we proposed here were very
9 basic. I mean, that we would have tentative agreements, you
10 know, and that we would focus on noneconomics initially. I
11 understood that -- and I wasn't wedded to those particular
12 ground rules. I understood that Mr. Martin had a different
13 view of things and -- but he did, in fairness to the Union,
14 here, in that return email where he put in red what the Union
15 would -- would be willing to agree to in ground rules and not,
16 at least we got, you know, we had some negotiation over that.
17 And parties didn't sign off on anything and didn't actually
18 agree to anything, but there was an engagement over those
19 proposed ground rules. That was the -- after that there was
20 never any engagement over any of our counterproposals.

21 Q Did -- did you -- you did reach an agreement, I think on
22 no recording?

23 A Well we both -- maybe -- yeah, we had -- yeah, we had
24 verbal agreement. What I'm used to is we -- once we agree on
25 the ground rules, we both initial and date it. We didn't get



1 to that juncture. But there were some of the things that were
2 in my ground rules that Mr. Martin said were agreeable to the
3 Union and some things that were not, and no recording was one
4 of those, yes, that were -- that we agreed to.

5 Q And you -- you agreed with the testimony that Mr. Martin
6 gave concerning the fact that this is pretty much, there hasn't
7 been a meeting since April, but none has been requested?

8 A I believe he agreed -- I believe he acknowledged that that
9 was the case, yes. That -- that we -- we're ready to meet upon
10 request. The fact that the charge was filed and is pending
11 does not suspend the Employer's obligation to bargain. If
12 the -- and we're willing to, and we've never refused. I
13 understand that if the -- if the parties think it makes sense
14 to wait, that's fine too. You know but we -- but we never
15 declined a bargain. And there has been no request since then,
16 since the --

17 Q Have you -- have you indicated in any way, shape or form
18 to the Union -- have you communicated to the Union that any
19 bargaining now would be futile --

20 A Huh-uh.

21 Q -- futile because of the charge or any activity that's
22 gone on?

23 A No. In fact, I think that in the last session that we
24 had, I said, so -- I said to Mr. Martin, so you don't want to
25 schedule another meeting? And Mr. Martin said no. I believe

1 that's how that last meeting ended.

2 MR. DILORENZO: No more questions.

3 JUDGE ESPOSITO: Okay. Mr. -- Mr. Childerhose, any cross-
4 examination?

5 MR. CHILDERHOSE: Can I consult with Mr. Martin, Your
6 Honor? Can I get a breakout room before I do cross-
7 examination?

8 JUDGE ESPOSITO: Sure. I'll put you in a breakout room.
9 Why -- why is this not --

10 I don't -- I don't understand why the breakout room thing
11 is only showing Mr. Pascucci. Does anybody know what to --

12 THE COURT REPORTER: I think he's probably still in there,
13 so he needs to actually log out of it. That's probably why.

14 MR. PASCUCCI: I left that room when I came to the main
15 room.

16 JUDGE ESPOSITO: Yeah. Yeah. No, I -- let's -- let's go
17 off the record.

18 (Off the record at 12:06 p.m.)

19 JUDGE ESPOSITO: Okay.

20 Mr. Childerhose, cross-examination?

21 MR. CHILDERHOSE: Yep. Just a few questions, Your Honor.

22 JUDGE ESPOSITO: Sure.

23 **CROSS-EXAMINATION**

24 Q BY MR. CHILDERHOSE: Mr. Pascucci, there've been a total
25 six sessions since the certification of the Union as the



1 employee's representative. Is that correct?

2 A I believe so.

3 Q And the Employer off -- at some point offered a
4 counterproposal that had six items in it? Is that correct?

5 A I believe so. Yes.

6 Q Okay. And these six items, do you remember what they
7 were?

8 A No. I'd have to look at the document, actually. And I
9 don't have the document open right now, so if you want to show
10 me that, I -- it's -- whatever is in response to Exhibit 1. I
11 know we had nondiscrimination. I think we had preamble. We
12 may have had recognition. I forget what the others were.

13 Q Okay. And these -- these six items were chosen by the
14 Employer, weren't they?

15 A Yes. And as I explained to the Union, we thought that
16 maybe, you know, that these would -- might be a good place to
17 start.

18 Q Okay, and -- and Union did not agree to these six items
19 being the six items to start with, did they?

20 A Well, as I testified, the Union really didn't engage over
21 any of it. They just said they needed to see an entire
22 contract proposal.

23 Q Okay. The Union wanted to discuss -- wanted proposals on
24 economics. Didn't they?

25 A They wanted proposals on everything. They wanted us to



1 accept the IWA, which had all the language in it, and then they
2 wanted to have proposals on the economics, which would be
3 primarily, I think, what the MOU addressed.

4 Q And -- and the -- the Employer never provided any
5 proposals on economics, did they?

6 A We did not.

7 Q And the six items that the Employer wanted to discuss,
8 those -- those six items never changed. They were consistently
9 the six items chosen by the Employer throughout those six
10 sessions, correct?

11 A Well, it -- I believe it was at the second session we gave
12 them a set of counterproposals which covered the six items, and
13 then the Union wanted proposals on everything, and as I
14 explained, we said that we thought it made more sense to get a
15 response at least to these before moving to other issues, but
16 we never got a response, so we never moved to other issues.

17 Q You -- you talked about your history of bargaining with
18 other similar -- or on behalf of other employers with --
19 with -- with other unions, maybe in -- maybe this unions as
20 well, have you -- is this typically the approach you've taken
21 in bargaining?

22 A Absolutely. It's not only the approach I've taken it's
23 the -- I've never seen a different approach, frankly, for a
24 first contract by anybody, whether it was me as lead person or
25 me having knowledge about negotiations that other -- that



1 another attorney has handled or -- or that the client
2 themselves have handled. I've never heard -- it's always been
3 done in this matter. This is my experience. Again, I can only
4 speak for myself on this, but.

5 Q You've had unions agree to bargain on a subset of items --
6 to begin bargaining previously?

7 A Yeah. That's how -- what happens is typically -- first of
8 all, it's not typical --

9 Q Okay. All right, that's -- that -- that was my question.
10 That was it.

11 A What was the question? I'm sorry. Could you repeat it?

12 Q In bargaining, you've had unions that have agreed to
13 bargain on a subset of items after discussing those items
14 with -- with the Employer to begin bargaining?

15 A Yes.

16 Q Okay.

17 A Yeah.

18 Q In this case, the Union did not agree to the six items
19 that the Employer unilaterally chose to begin bargaining, did
20 it?

21 A No, they didn't agree to all six, nor did they counter on
22 an -- on all six, nor did they counter on any one of the six
23 and -- and you know, I invited them to repeatedly. And I tried
24 to open up a dialogue about the -- a couple of them, like the
25 nondiscrimination. Why can't we work on that? Why can't we

1 work on preamble? I don't understand why this -- why we
2 shouldn't be able to discuss those without regard to an overall
3 contract proposal, and there was never any willingness on the
4 part of the Union to do that.

5 Q To -- to clarify, the -- the Union did not agree that they
6 wanted to limit bargaining to these six noneconomic items.

7 A I wasn't -- I wasn't attempting to limit bargaining to
8 those six. I was just trying to start a process. And those
9 were -- I thought, were some good places to start. If the
10 Union had said to me, well let's start with these other three
11 items, these other five items, that would have been fine. But
12 they never -- all it ever was, was agree to the IWA and give us
13 an entire contract proposal.

14 Q The Union did request proposals on economic items, didn't
15 it?

16 A Not -- no, not separate from an overall. The Union, all
17 the Union ever requested was a contract proposal on everything,
18 both all noneconomics as well as all economics at the outset of
19 negotiations for an initial contract, which I've never seen
20 before. Or heard of.

21 MR. CHILDERHOSE: Okay. Okay. Your -- Your Honor, I
22 don't have any further questions.

23 JUDGE ESPOSITO: Okay.

24 Mr. Martin, do you have any questions, for Mr. Pascucci?

25 MR. MARTIN: I do not, Your Honor.



1 JUDGE ESPOSITO: Okay.

2 Mr. DiLorenzo, do you have any redirect examination?

3 MR. DILORENZO: Just a couple, Your Honor.

4 JUDGE ESPOSITO: Sure.

5 **REDIRECT EXAMINATION**

6 Q BY MR. DILORENZO: You were asked on cross-examination
7 about the fact that the Union has -- you've had unions agree to
8 this process. For a first contract, have you actually had
9 unions propose easy topics to start the negotiations to build a
10 first contract such as preamble, recognition clause, what
11 applies to those kinds of things? Have you had the union start
12 with (audio interference) contract?

13 A Absolutely. In fact, in the majority of the first
14 contract progressions and negotiations that I've handled, the
15 union starts with a series of noneconomic proposals, not the
16 entirety, but they pick four or five or whatever, and they
17 start with those, and then we counter to that, and then the
18 parties move forward on that basis. That's how most of mine
19 have been. Sometimes the Employer, you know, starts, like we
20 did in this negotiation, with some issues that we thought might
21 make sense to -- to try to -- try to bargain over it before we
22 move on to others, but -- or you know, at least have some kind
23 of dialogue with respect to those and then move on to others.
24 But yeah, so it's been probably more often than not it's the
25 union who has led with that approach, in my experience.



1 Q Recog -- just so I understand it, Ray, you're -- the
2 recognition clause proposal was who was going to be covered by
3 this contract, correct?

4 A Yes.

5 Q Which has a relationship back to who was in the election
6 and what unit was certified by the Board?

7 A My recognition proposal tracks exactly with the board
8 certification in terms of defining the bargaining unit.

9 Q And did you ever hear what was objectionable about the
10 recognition clause that you proposed?

11 A The Union just wouldn't discuss anything. They did --
12 never -- never addressed it one way or the other.

13 Q Now, you were asked on cross-examination that in this
14 particular case the Union did not agree to negotiate in this
15 matter, correct?

16 A Correct.

17 Q (Audio interference) with you selecting, perhaps, some
18 low-hanging fruit to get some agreement or discussion going.
19 They did not agree to that process, correct?

20 A They did not. And the Union basically put a condition on
21 bargaining that we couldn't proceed until they had an overall
22 contract proposal.

23 Q And did you -- did you as the Employer refuse to agree to
24 negotiate from the IW contract as an entire proposal?

25 A No, what we said -- we said we weren't willing to sign on



1 to that document, that we wanted to create our own document.
2 But in terms of some of the content of that document, as I
3 mentioned, the proposals we did present to the Union
4 incorporated some of the language from the Union's IWA.

5 MR. DILORENZO: And -- no -- no more questions.

6 JUDGE ESPOSITO: Okay. Any additional cross-examination,
7 Mr. Childerhose?

8 **RECROSS-EXAMINATION**

9 Q BY MR. CHILDERHOSE: Maybe just a point I missed. With
10 regard to the bargaining notes we have on the record, you've --
11 you've reviewed those bargaining notes?

12 A Yes.

13 Q Both the Unions' and the Employers'?

14 A Yes.

15 Q And were there any inaccuracies in those bargaining notes
16 that you're -- you're aware of?

17 A I didn't see anything that was wrong. I don't think
18 that -- obviously they're not the entirety of the conversation,
19 but I think -- I didn't see anything that was incorrect. And I
20 think that they -- they're a pretty good summary of what the
21 conversation was.

22 MR. CHILDERHOSE: Okay. No further questions, Your Honor.

23 JUDGE ESPOSITO: Mr. Martin, do you have any cross-
24 examination at this point?

25 MR. MARTIN: I do not.



1 JUDGE ESPOSITO: And -- okay, Mr. DiLorenzo, any redirect?

2 MR. DILORENZO: No, Your Honor.

3 JUDGE ESPOSITO: Okay. All right. Thank you very much,
4 Mr. Pascucci.

5 THE WITNESS: Thank you.

6 JUDGE ESPOSITO: Mr. DiLorenzo, anything else for
7 respond -- or Mr. DiLorenzo, Mr. Pascucci, anything else for
8 respondent's case?

9 MR. PASCUCCI: Just to introduce -- I don't know if we
10 introduced, or maybe it was already in evidence, the
11 Respondent's 1. I believe you said it was, Judge, already in
12 evidence.

13 JUDGE ESPOSITO: Yes. Respondent's 1 is the notes.

14 MR. PASCUCCI: Right. And our propo -- our proposal's
15 in -- in your document, right?

16 JUDGE ESPOSITO: Yes. Your -- your -- your proposals
17 are -- are a General Counsel Exhibit.

18 MR. PASCUCCI: Okay.

19 JUDGE ESPOSITO: Or -- or -- I don't want to say that. I
20 want to say there's a -- there's a set of proposals that
21 General Counsel and Mr. Martin identified as respondent's
22 proposals that --

23 MR. PASCUCCI: It's -- yeah. And -- and I saw those, and
24 those are -- my on -- the disadvantage here, of course, for all
25 of us, is we don't have the papers, so it's not easy for me to



1 see what's what. But yeah, those -- those were our proposals
2 that were --

3 JUDGE ESPOSITO: Okay.

4 MR. PASCUCCI: -- included on our counsel's exhibit.

5 So I don't believe we have anything further, unless you
6 do, Lou.

7 MR. DILORENZO: No, I don't think so. I think -- I think
8 we're -- we rest.

9 JUDGE ESPOSITO: Okay.

10 And General Counsel, you don't have -- do you have any
11 rebuttal? You don't have any rebuttal, do you?

12 MR. CHILDERHOSE: I don't anticipate it. I --

13 JUDGE ESPOSITO: Well, this is it.

14 MR. CHILDERHOSE: Yeah, no, I --

15 JUDGE ESPOSITO: It's now or never.

16 MR. CHILDERHOSE: No, I -- I do not. Before we close the
17 hearing, I -- I would like to check -- touch base with the
18 region, if I can do that.

19 JUDGE ESPOSITO: Okay.

20 MR. CHILDERHOSE: Just take a short break, so I can do
21 that.

22 JUDGE ESPOSITO: Okay, so we'll -- we'll -- we'll take a
23 break for -- we'll take a break for that. Before we do that, I
24 realized that I forgot to ask Mr. Pascucci to confirm on the
25 record that he's completely deleted any Jencks materials



1 received in connection with Mr. Martin's testimony from his
2 equipment and has destroyed any -- any materials that he may
3 have printed out in order to prepare for Mr. Martin's cross-
4 examination.

5 MR. PASCUCCI: I will do that now, Judge. I did not
6 print, so I will delete the email attachments that were sent to
7 me.

8 JUDGE ESPOSITO: Okay, yes, please --

9 MR. DILORENZO: And I will as well, Your Honor.

10 JUDGE ESPOSITO: Yes, Mr. DiLorenzo.

11 MR. DILORENZO: I didn't print it -- I didn't print it
12 either.

13 JUDGE ESPOSITO: Okay. So please -- please delete it
14 completely from your computer, including from the little
15 recycle thingy -- thing.

16 MR. PASCUCCI: Right.

17 JUDGE ESPOSITO: Yeah, right. Thank you.

18 Okay, so Mr. Childerhose, how long do you need to consult
19 with the region before we close the record?

20 MR. CHILDERHOSE: About ten minutes, Your Honor?

21 JUDGE ESPOSITO: All right, so why -- everybody come back
22 at 12:30, okay?

23 Let's go off the record.

24 MR. CHILDERHOSE: Thank you.

25 (Off the record at 12:22 p.m.)



1 JUDGE ESPOSITO: Okay. Mr. Childerhose, anything else?

2 MR. CHILDERHOSE: Nothing further, Your Honor.

3 JUDGE ESPOSITO: Okay. I will prepare and file with the
4 Board my decision in this proceeding. A copy will be served on
5 each of the parties. You are reminded to refer to the Board's
6 rules and regulations for information regarding the filing of
7 briefs and proposed findings for my consideration and regarding
8 procedures before the Board after the issuance of the judge's
9 decision. I will allow until September 7th, 2021 for the
10 filing of briefs and any proposed findings and conclusions.
11 Briefs should be filed directly with the judge's division
12 office in New York, New York, regardless of whether they are
13 e-filed or mailed. See Sections 102.2 to 102.5 of the Board's
14 rules for filing and service requirements. Any requests for an
15 extension of time for the filing of briefs must be made in
16 writing to Associate Chief Judge Kenneth Chu in that office and
17 served on the other parties. The positions of the other
18 parties regarding the proposed extension should be obtained and
19 set forth in the request. Request for extensions must contain
20 specific reasons and show that the requesting party cannot
21 reasonably meet the current deadline.

22 There being nothing further, the hearing is now closed.
23 Off the record.

24 **(Whereupon, the hearing in the above-entitled matter was closed**
25 **at 12:33 p.m.)**



C E R T I F I C A T I O N

This is to certify that the attached proceedings, via Zoom videoconference, before the National Labor Relations Board (NLRB), Region 29, Case Number 29-CA-275229, Troutbrook Company, LLC d/b/a Brooklyn 181, Hospitality, LLC and New York Hotel and Motel Trades Council, AFL-CIO, held at the National Labor Relations Board, Region 29, Two Metro Tech Center, Suite 5100, Brooklyn, New York 11201, on August 3, 2021, at 9:30 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



BARRINGTON MOXIE

Official Reporter